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DISTRICT I

May 24, 2022

To:

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Clerk of Circuit Court
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Leo Davenport 627640
Racine Youthful Offender Corr. Facility
P.O. Box 2500
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1574-CRNM State of Wisconsin v. Leo Davenport (L.C. # 2017CF5132)

Before Brash, C.J., Dugan and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Leo Davenport appeals from a judgment of conviction, following guilty pleas, to second-degree recklessly endangering safety and possessing a firearm as an adjudicated delinquent. His appellate counsel, Dustin C. Haskell, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Davenport received a copy of the report, was advised of his right to file a response, but did not do so. We have

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

independently reviewed the record and the no-merit report as mandated by ***Anders***. We conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

On November 6, 2017, the State charged Davenport with fleeing from an officer causing damage to property, second-degree recklessly endangering safety, hit and run causing injury, and possession of a firearm by a person adjudicated delinquent of an offense that would be a felony. The complaint states that on the afternoon of November 1, 2017, Milwaukee police responded to a report of reckless driving. Police located the car, which was moving erratically, and a high speed chase ensued. The chase ended when the driver—later identified as Davenport—struck another vehicle and then fled on foot. The complaint further states that police recovered a firearm from inside the vehicle Davenport was driving.

Pursuant to a plea agreement, Davenport pled guilty to second-degree recklessly endangering safety and possessing a firearm as an adjudicated delinquent. The remaining charges were dismissed and read in at sentencing. The circuit court imposed consecutive maximum sentences, which resulted in a total of ten years of initial confinement and ten years of extended supervision.

The no-merit report addresses the potential issues of whether Davenport's pleas were valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquy, together with the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instructions, demonstrate Davenport's understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also* ***State v. Moederndorfer***, 141

Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We note, however, that the circuit court did not ascertain whether Davenport's pleas were induced by any threats, nor did the circuit court advise Davenport of the potential $25,000 fine he faced on each count. WIS. STAT. § 939.50(3)(g). However, the plea questionnaire and waiver of rights form, signed by Davenport, confirm that Davenport was neither threatened nor forced to enter the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 42, 317 Wis. 2d 161, 765 N.W.2d 794 (explaining that although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken). As to the penalties for the charges—including the potential maximum fines—they were accurately stated in the criminal complaint, which Davenport acknowledged he had read. *See* ***State v. Taylor***, 2013 WI 34, ¶¶34-39, 347 Wis. 2d 30, 829 N.W.2d 482 (holding that the plea was knowingly, voluntarily, and intelligently entered where the record made clear that, despite the court's misstatement at the plea hearing, the defendant knew the maximum penalty that could be imposed). The record does not suggest there would be an arguable basis to challenge Davenport's pleas.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. *See* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court

should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***id.***

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The circuit court gave Davenport credit for accepting responsibility for his actions, but observed that Davenport's criminal activity was "escalating." The circuit court emphasized Davenport's prior record, his need for rehabilitation, and the need for deterrence. The resulting sentence was the maximum authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, but was not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the circuit court's sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Davenport in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals