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DISTRICT I

October 4, 2022

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

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George Christenson
Clerk of Circuit Court
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Gary M. Marshall 517867
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P.O. Box 925
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Christopher P. August
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP2096-CRNM State of Wisconsin v. Gary M. Marshall (L.C. # 2020CF1566)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Gary M. Marshall appeals from a judgment of conviction, following guilty pleas, of three counts of possession of child pornography. His appellate counsel, Christopher P. August, 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). Marshall received a copy of the report, was advised of his right to file a response, but did not do so. We have independently reviewed the record and the no-merit report

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

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 April 21, 2020, the State charged Marshall with ten counts of possession of child pornography. The complaint alleged that law enforcement received a tip from the National Center of Missing and Exploited Children that Marshall uploaded suspected child pornography to the internet. The complaint further states that police executed a search warrant on Marshall's home and found a microSD card containing multiple images of child pornography. Marshall admitted to possessing and viewing the images.

Marshall ultimately pled guilty to three counts of possession of child pornography. The circuit court held a plea hearing, conducted a colloquy, and accepted Marshall's guilty pleas. The remaining charges were dismissed and read in at sentencing.² The circuit court sentenced Marshall to a global sentence of fifteen years of initial confinement followed by fifteen years of extended supervision.

Appellate counsel's no-merit report addresses two issues: (1) whether Marshall's pleas were valid, and (2) whether the circuit court properly exercised its sentencing discretion.

We agree with appellate counsel that there is no arguable merit to a claim that Marshall's pleas were invalid. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). The circuit court established at the plea hearing that Marshall understood the nature of the crimes to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving

² The State informed the circuit court that Marshall also had two pending hit and run charges that the State offered to dismiss and read in at the plea hearing.

by entering the pleas. The circuit court also established that Marshall signed a guilty plea questionnaire/waiver of rights form and an addendum, that Marshall reviewed the relevant jury instructions, and that Marshall understood the contents of those documents. *See State v. Pegeese*, 2019 WI 60, ¶¶36-37, 387 Wis. 2d 119, 928 N.W.2d 590. The circuit court conducted a colloquy with Marshall that complied with its obligations when accepting his guilty pleas. *See id.*, ¶23; *see also Bangert*, 131 Wis. 2d at 266-72; WIS. STAT. § 971.08. The plea hearing transcript and other record documents demonstrate that Marshall entered his guilty pleas knowingly, intelligently, and voluntarily. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

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 the relevant sentencing objectives and factors. The circuit court focused particularly on the gravity of the offense, noting that Marshall downloaded thousands of images of child pornography and

“assist[ed] in continuing an industry that exploits and violates children.” The circuit court also discussed Marshall’s prior record, which included convictions for child sexual assault, and emphasized the need to protect children from Marshall’s behavior. The resulting sentence, though longer than the sentences recommended by both the State and defense counsel, was within the maximum authorized by law. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence 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 Christopher P. August is relieved of further representation of Gary M. Marshall 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