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October 11, 2022

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

2021AP1487-CRNM State of Wisconsin v. Robert L. Satcher, Jr. (L.C. # 2014CF2099)

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).

Robert L. Satcher, Jr., appeals a judgment of conviction entered upon his guilty pleas to four of the eleven charges against him, namely, first-degree reckless injury (count five), armed robbery (count seven), attempted armed robbery (count eight), and possession of a firearm by a person previously adjudicated delinquent for a felonious act (count nine), all as a party to a crime. He also appeals a postconviction order granting him 391 days of sentence credit. Appellate counsel, Attorney George Tauscheck, filed a no-merit report pursuant to ***Anders v.***

California, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).[1] Satcher did not file a response.[2] Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders***, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State alleged in a criminal complaint that on December 1, 2013, Satcher took a Chevrolet Sebring from the parking garage in Bayshore Mall in Milwaukee County and drove the vehicle away, all without permission of its owner, R.C. The State further alleged that Satcher was the gunman who throughout that day emerged at times from the Sebring and at other times from a Dodge Stratus travelling with the Sebring and who committed or attempted to commit a series of seven armed robberies, during one of which he shot a victim in the arm.

The State went on to allege that on December 2, 2013, police discovered the Sebring parked in a lot. Police conducted surveillance and, on December 3, 2013, they arrested Satcher as he got into the driver's seat of the Sebring. At the time of the arrest, Satcher was wearing a distinctive ski mask that two of the armed robbery victims, N.R. and M.S., subsequently identified as the mask worn by the gunman who accosted them. During a search of Satcher incident to his arrest, police found an Apple iPhone belonging to him and a second iPhone that

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

[2] Satcher pursued three prior no-merit appeals from the judgment of conviction in this case. Satcher's predecessor appellate counsel voluntarily dismissed two of those prior appeals before filing a no-merit report. *See* ***State v. Satcher***, No. 2015AP2409-CRNM, unpublished op. and order (WI App May 9, 2016); ***State v. Satcher***, No. 2016AP2051-CRNM, unpublished op. and order (WI App Nov. 1, 2017). Attorney Tauscheck voluntarily dismissed the third prior appeal after filing a no-merit report to which Satcher had filed a response. *See* ***State v. Satcher***, No. 2020AP146-CRNM, unpublished op. and order (WI App June 8, 2021). Attorney Tauscheck advises that the no-merit report that he filed in the instant appeal addresses the issues that Satcher raised in response to the no-merit report filed in appeal No. 2020AP146-CRNM.

belonged to L.B., another of the armed robbery victims. Satcher gave a statement to police and admitted that he was present when the Sebring was stolen from Bayshore Mall and that he had driven the stolen car. Police searched his cellphone and found a video of Satcher and two companions engaged in sex acts with a female.

Police arrested B.C., who gave a statement admitting that he was with Satcher and two other people at the time of the armed robberies on December 1, 2013. According to B.C., Satcher was the gunman for all of the robberies. Police subsequently interviewed D.F., who also admitted that he was with Satcher at the time of the robberies on December 1, 2013.[3] D.F. further stated that after the robberies, he, Satcher, and a third co-actor "picked up a girl," later identified as a fifteen-year-old, and took turns having sex with her.

The State charged Satcher with eight offenses as a party to a crime: operating a motor vehicle without owner's consent; first-degree reckless injury; three counts of armed robbery; and three counts of attempted armed robbery. The State also charged him as a solo actor with possession of a firearm by a person previously adjudicated delinquent for a felonious act; possession of a dangerous weapon by a person under eighteen years of age; and possession of child pornography.

Satcher decided to resolve the charges against him with a plea agreement. Pursuant to its terms, he pled guilty as charged to counts five, seven, and eight—first-degree reckless injury, armed robbery, and attempted armed robbery, respectively—all as a party to a crime. The State

[3] The record reflects that B.C. was a minor at the time of these offenses and that proceedings against him were resolved in juvenile court. We therefore refer to B.C. only by initials. *See* WIS. STAT. RULE 809.81(8). It appears that D.F. may also have been a minor at the time of these offenses. We therefore refer to him by initials as well. *See* ***id.***

agreed to amend count nine—possessing a firearm as a person previously adjudicated delinquent for a felonious act—to allege that Satcher committed the offense as a party to a crime, and Satcher pled guilty to that amended charge as well. For the four convictions, the State agreed to recommend an aggregate sentence of eighteen years of initial confinement and ten years of extended supervision, and the State further moved to dismiss and read in the remaining charges. The circuit court accepted Satcher's pleas and granted the State's dismissal motions.[4]

At sentencing, the circuit court imposed an evenly bifurcated ten-year term of imprisonment for first-degree reckless injury, a consecutive evenly bifurcated twenty-year term of imprisonment for armed robbery, and a consecutive, evenly bifurcated ten-year term of imprisonment for attempted armed robbery. The circuit court also imposed an evenly bifurcated six-year term of imprisonment for possessing a firearm as a person previously adjudicated delinquent for a felonious act and ordered Satcher to serve that sentence concurrently with the sentence for attempted armed robbery. The circuit court found Satcher eligible for the challenge incarceration program and deferred a determination as to both restitution and sentence credit. At a subsequent restitution hearing, Satcher stipulated to an order that he pay $1,315.64 in

[4] Although the probable cause section of the complaint shows that the criminal activity at issue in this case began with the act of taking the Sebring on December 1, 2013, the charging section alleges that Satcher committed some of the crimes on October 21, 2013. At the plea hearing, the State explained that the references to October 21, 2013, stemmed from a scrivener's error. Satcher, by counsel, responded that he had a corrected version of the complaint and did not dispute that he had notice of the charges against him. Charging documents in criminal cases are not invalidated by errors that do not prejudice the defendant. *See* WIS. STAT. § 971.26. Accordingly, the erroneous references to October 21, 2013, do not provide a basis for Satcher to seek postconviction relief. We observe, however, that the judgment of conviction echoes the errors in the criminal complaint. To avoid confusion in the future, we direct the circuit court upon remittitur to oversee entry of an amended judgment of conviction showing that counts five and nine, to which Satcher pled guilty, and counts three, four, and ten, which were read in for sentencing purposes, all arose on December 1, 2013. *See* ***State v. Prihoda***, 2000 WI 123, ¶17, 239 Wis. 2d 244, 618 N.W.2d 857 (holding that the circuit court may correct clerical errors at any time).

restitution. In later postconviction proceedings, the circuit court awarded Satcher 391 days of credit against his sentence for count five, an award representing the days that he spent in custody from the date of his arrest on December 3, 2013, until his sentencing on December 29, 2014.

We first consider whether Satcher could pursue an arguably meritorious claim for plea withdrawal on the ground that his guilty pleas were not knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). At the outset of the plea hearing, the circuit court established that Satcher was sixteen years old, that he had a ninth grade education, and that he was not taking drugs or medications that interfered with his ability to understand the proceedings. The circuit court also established that Satcher had signed a plea questionnaire and waiver of rights form and addendum after reviewing them with his trial counsel, and Satcher assured the circuit court that his trial counsel had explained those documents to him in a way that he could understand. *See* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (providing that a completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The circuit court then conducted a colloquy with Satcher that fully complied with the circuit court's obligations when accepting a plea other than not guilty. *See* ***State v. Pegeese***, 2019 WI 60, ¶23, 387 Wis. 2d 119, 928 N.W.2d 590; *see also* WIS. STAT. § 971.08. The record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions that describe the elements of the crimes to which Satcher pled guilty, and the plea hearing transcript—demonstrates that Satcher entered his guilty pleas knowingly, intelligently, and voluntarily.

See § 971.08; *see also* ***Bangert***, 131 Wis. 2d at 266-72. Accordingly, the record does not reflect any basis for an arguably meritorious challenge to the validity of his pleas.[5]

At the outset of the sentencing hearing, the prosecutor described the plea agreement as including the State's recommendation for "full restitution to all victims." Defense counsel agreed, stating: "that is what we have on our plea form." The plea questionnaire in the record does not reflect that the plea agreement addressed restitution, and the parties did not mention restitution at the plea hearing when describing the plea agreement. We need not and do not consider whether Satcher could pursue an arguably meritorious claim that the prosecutor misstated the terms of the plea agreement. A breach of a plea agreement does not provide a basis for relief unless it is material and substantial. *See* ***State v. Williams***, 2002 WI 1, ¶38, 249 Wis. 2d 492, 637 N.W.2d 733. "A material and substantial breach is a violation of the terms of the agreement that defeats the benefit for which the accused bargained." ***Id.*** Assuming without deciding that Satcher could show that the plea agreement was silent as to restitution, the prosecutor's misstatement was neither material nor substantial because, when a plea agreement is silent regarding restitution, the State is free to make a recommendation for restitution as the State sees fit. *See* ***State v. Bowers***, 2005 WI App 72, ¶¶18-20, 280 Wis. 2d 534, 696 N.W.2d 255. Accordingly, further pursuit of this issue would lack arguable merit.

[5] Satcher was fifteen years old in December 2013, and the State therefore initially filed a delinquency petition in juvenile court regarding the charges in this matter. Although the record before us does not contain the details of the juvenile court proceedings, it does indicate that Satcher was subsequently waived into adult court. *See* WIS. STAT. § 938.18. Satcher cannot pursue an arguably meritorious challenge to that waiver. Because he resolved the criminal charges against him with a plea agreement, he gave up whatever right he might have had to challenge the juvenile court proceedings. *See* ***State v. Kraemer***, 156 Wis. 2d 761, 765-66, 457 N.W.2d 562 (Ct. App. 1990).

We next conclude that Satcher could not pursue an arguably meritorious challenge to his sentences. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence[.]" ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

The circuit court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the offenses, and the community. *See* ***id.*** The circuit court has discretion to determine both the factors that are relevant in imposing a sentence and the weight to assign to each relevant factor. *See* ***Stenzel***, 276 Wis. 2d 224, ¶16.

Here, the circuit court identified deterrence as the primary sentencing goal, and the circuit court discussed appropriate factors that it viewed as relevant to achieving that goal. The circuit court considered the gravity of the offenses, finding that Satcher committed dangerous crimes and observed that he was fortunate not to have killed any of his victims with an errant gunshot. In assessing Satcher's character, the circuit court acknowledged that his family viewed him as intelligent and supportive of his elders, but the circuit court was disturbed by his failure to

apologize to his many victims and by his long-term involvement with a street gang. Further, the circuit court found that Satcher did not have substance abuse problems or mental health issues and that he committed his offenses for "money and a thrill." The circuit court placed particular emphasis on the need to protect the public, finding that Satcher had terrorized people engaged in their normal lives, and the circuit court found that "these activities ... ruin neighborhoods. They ruin communities.... They contribute to the degeneration and decline of our community and of everybody's quality of life."

The circuit court considered but rejected a probationary disposition. *See* ***Gallion***, 270 Wis. 2d 535, ¶25. The circuit court found that Satcher had been supervised as a juvenile but that he had "reoffended rapidly every time." The circuit court went on to find that probation would unduly depreciate the gravity of Satcher's crimes. In the circuit court's view, imprisonment for twenty years was necessary to effect the goal of sentencing because:

> maybe [others] will pause before they pick up that gun and pick up that mask and go out to rob somebody and think, do I want to ... end up like Bob Satcher[?] Is it worth it to me[?] Maybe, and that's the Court's hope, that maybe they'll pause and think about the risk to themselves.

The circuit court identified the factors it considered in fashioning an appropriate disposition. The factors were proper and relevant. *See* ***id.***, ¶43 & n.11. Further, the record reflects that the sentences were not unduly harsh. A sentence is unduly harsh "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). Here, upon Satcher's convictions as a party to the four crimes at issue, Satcher faced aggregate penalties of ninety-five years of imprisonment

and $275,000 in fines, specifically: (1) twenty-five years of imprisonment and a $100,000 fine for first-degree reckless injury; (2) forty years of imprisonment and a $100,000 fine for armed robbery; (3) twenty years of imprisonment and a $50,000 fine for attempted armed robbery; and (4) ten years of imprisonment and a $25,000 fine for possessing a firearm as a person previously adjudicated delinquent for a felonious act. *See* WIS. STAT. §§ 940.23(1)(a), 943.32(2), 939.32(1g), 941.29(2)(b), 939.50 (3)(c)-(d), (g) (2013-14). The aggregate forty-year term of imprisonment imposed is far less than the law allowed. "A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Grindemann***, 255 Wis. 2d 632, ¶31 (citation and brackets omitted). Accordingly, we conclude that a challenge to the circuit court's exercise of sentencing discretion would lack arguable merit.[6]

[6] The circuit court pronounced sentence first for count five (first-degree reckless injury), then for count seven (armed robbery), then for count eight (attempted armed robbery), and then ordered that Satcher serve those three sentences "consecutive to one another." The judgment of conviction provides that Satcher's sentence for count five is consecutive to counts seven and eight, his sentence for count seven is consecutive to counts five and eight, and his sentence for count eight is consecutive to counts five and seven. Obviously, however, when the circuit court ordered that Satcher serve three of his sentences "consecutive to one another," the circuit court did not intend a sentence structure in which service of each sentence must await the service of the other two sentences. *Cf.* ***State v. Brown***, 2010 WI App 43, ¶1 & n.1, 324 Wis. 2d 236, 781 N.W.2d 244. Even if the circuit court's pronouncement created an ambiguity as to sentence structure, the record as a whole unquestionably reflects that the circuit court intended Satcher to serve his sentence on count five first. *See* ***State v. Oglesby***, 2006 WI App 95, ¶¶20-21, 292 Wis. 2d 716, 715 N.W.2d 727 (explaining that the court of appeals determines the sentencing court's intent by examining the record as whole when faced with an ambiguous oral pronouncement). Specifically, when the circuit court awarded sentence credit in postconviction proceedings, the circuit court awarded the credit "on count five" and confirmed that "[a]ll other counts are consecutive." *Cf.* ***State v. Obriecht***, 2015 WI 66, ¶36, 363 Wis. 2d 816, 867 N.W.2d 387 (reflecting that when sentences are consecutive, sentence credit is applied to the first sentence to be served). Accordingly, on remand, the circuit court shall oversee an amendment to the judgment of conviction reflecting that Satcher must serve count five as the first of his three consecutive sentences, that count seven is consecutive to count five, and that count eight is consecutive to count seven. *See* ***Prihoda***, 239 Wis. 2d 244, ¶17.

We also conclude that Satcher could not pursue an arguably meritorious challenge to the circuit court's finding that he is ineligible for the Wisconsin substance abuse program. A circuit court exercises its discretion when determining a defendant's eligibility for that program, and we will sustain the circuit court's conclusion if it is supported by the record and the overall sentencing rationale. *See* ***State v. Owens***, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. § 973.01(3g).[7] The circuit court here found that Satcher did not have substance abuse problems, and the record supports that finding. Satcher's mother spoke at sentencing and denied that he had any such problems, and Satcher did not suggest otherwise. Accordingly, the record supports the circuit court's discretionary decision not to find Satcher eligible for the Wisconsin substance abuse treatment program. Further pursuit of this issue would lack arguable merit.

Next, we conclude that Satcher could not pursue an arguably meritorious challenge to the order that he pay restitution in the amount of $1,015.64 to R.C., the owner of the Sebring, and $300 to L.B., the victim of the armed robbery to which Satcher pled guilty. Satcher, by counsel, stipulated to restitution in those amounts. *See* WIS. STAT. § 973.20(13)(c). A challenge to the order would therefore be frivolous within the meaning of ***Anders***. *Cf.* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (holding that a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

[7] The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

Next, we conclude that Satcher could not pursue an arguably meritorious challenge to the postconviction order awarding him 391 days of sentence credit. The record reflects that he received credit against his sentence on count five for every day following his arrest until the day of sentencing, including the days that he spent at Lincoln Hills School. Further, because his other sentences in this case were consecutive to count five, he was not entitled to receive credit against those sentences. *See* ***State v. Boettcher***, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) ("Credit is to be given on a day-for-day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively."). Further pursuit of this matter would be frivolous within the meaning of ***Anders***.

We also agree with appellate counsel that Satcher could not pursue an arguably meritorious challenge to the four DNA surcharges imposed in this case pursuant to WIS. STAT. § 973.046(1r) (2013-14) (requiring the sentencing court to impose a $250 DNA surcharge for each felony conviction). Counsel advises that Satcher believes that the surcharges violated the Ex Post Facto Clauses of the United States and Wisconsin Constitutions because the version of § 973.046 that was in effect when he committed his crimes in 2013 did not mandate DNA surcharges for his offenses.[8] "The Ex Post Facto Clauses prohibit enforcement of a statute 'which makes more burdensome the punishment for a crime after its commission.'" *See* ***State v. Williams***, 2018 WI 59, ¶21, 381 Wis. 2d 661, 912 N.W.2d 373 (citation and brackets omitted); *see also* U.S. CONST. art. 1, §§ 9-10, WIS. CONST. art. I § 12. Our supreme court has determined, however, that the surcharges at issue are not punishment and that application of § 973.046(1r)

[8] WISCONSIN STAT. § 973.046(1r) (2013-14), mandating a DNA surcharge for every felony count, first applied to sentences imposed on January 1, 2014. *See* 2013 Wis. Act 20, §§ 2354-55, 9326(1)(g), 9426(1)(am).

(2013-14) to defendants who committed their crimes before its enactment does not run afoul of the Ex Post Facto Clauses. *See* ***Williams***, 381 Wis. 2d 661, ¶¶16, 43. Further, the surcharges cannot be waived. *See* ***State v. Cox***, 2018 WI 67, ¶1, 382 Wis. 2d 338, 913 N.W.2d 780. Accordingly, pursuit of this issue would be frivolous within the meaning of ***Anders***.

Last, appellate counsel advises that Satcher would like to challenge certain actions of the Department of Corrections (DOC). Specifically, Satcher believes that the DOC is wrongly deducting too high a percentage of funds from his prison trust account to pay his court costs, fees, surcharges, and restitution. We agree with appellate counsel that pursuit of such a claim in the context of a criminal appeal would be frivolous. An inmate who wishes to challenge the DOC's actions in deducting money from the inmate's prison account must pursue such a challenge through the inmate complaint review system and, if that is unsuccessful, by writ of certiorari to the circuit court *See* ***State v. Williams***, 2018 WI App 20, ¶¶1, 4, 380 Wis. 2d 440, 909 N.W.2d 177. Pursuit of such a challenge in a postconviction motion or an appeal from the judgment of conviction would therefore lack arguable merit.[9]

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that both the judgment of conviction, amended as required by footnotes four and six, and the postconviction order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

[9] Consideration of whether a challenge to the DOC's actions would have merit if pursued outside the context of a criminal appeal is beyond the scope of our review in this matter.

IT IS FURTHER ORDERED that Attorney George Tauscheck is relieved of any further representation of Robert A. Satcher, Jr., effective on the date that an amended judgment of conviction as required by this opinion and order is entered 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