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DISTRICT I

February 21, 2023

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Winn S. Collins
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Jay R. Pucek
Electronic Notice

Leon Donte Smith 699854
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2022AP1042-CRNM State of Wisconsin v. Leon Donte Smith (L.C. # 2020CF3176)

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).

Leon Donte Smith appeals from a judgment of conviction, following guilty pleas, of one count of first-degree sexual assault of a child (intercourse with a child under the age of thirteen), and one count of fourth-degree sexual assault. Smith's appellate counsel, Jay R. Pucek, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Smith 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 as

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

On September 9, 2020, the State filed a criminal complaint charging Smith with one count of first-degree sexual assault of a child (sexual intercourse with a child under age thirteen) and one count of sexual assault of a child under age thirteen. According to the complaint, Smith engaged in mouth to vagina contact with his niece and also attempted penis to vagina intercourse, causing her to bleed. Smith admitted to police that he engaged in mouth to vagina contact with his niece. The complaint also alleged that Smith engaged in sexual intercourse with his little sister multiple times when she was between six and eight years old. That conduct occurred between 1995 and 1998.

The matter was ultimately resolved by a plea agreement whereby Smith pled guilty to first-degree sexual assault of a child (intercourse with a child under age thirteen) and an amended charge of fourth-degree sexual assault. The circuit court conducted a colloquy with Smith, accepted his pleas, and sentenced him to twenty-five years of imprisonment, bifurcated as fifteen years of initial confinement and ten years of extended supervision. This appeal follows.

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

As to the first issue, we conclude that the plea colloquy, together with the plea questionnaire/waiver of rights form and the addendum demonstrate Smith's understanding of the information to which he was entitled and that his plea was knowing, voluntary, and intelligent. 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). Thus, there is no arguable merit to a claim that the circuit court failed to properly conduct a plea colloquy or that Smith's pleas were anything other than knowing, intelligent, and voluntary.

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 should 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 should 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 must 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.* The record reveals that the circuit court considered and applied the relevant sentencing factors, focusing specifically on the threat Smith posed to children and Smith's pattern of sexually criminal behavior. The resulting sentence was within the potential maximum authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is 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 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 Jay R. Pucek is relieved of further representation of Leon Donte Smith 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