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DISTRICT I

March 28, 2023

To:

Hon. Glenn H. Yamahiro
Circuit Court Judge
Electronic Notice

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

Winn S. Collins
Electronic Notice

Christopher D. Sobic
Electronic Notice

David J. Cole Jr. 471426
Winnebago Correctional Center
P.O. Box 128
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1486-CRNM State of Wisconsin v. David J. Cole, Jr. (L.C. # 2019CF1614)

Before Donald, P.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).

David J. Cole, Jr. appeals from his judgment of conviction entered after he pled guilty to possession of a firearm by a felon. His appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Cole was advised of his right to file a response, but he did not do so. Upon this court's independent review of the record as mandated by *Anders*, and counsel's report, we

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

conclude there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgment.

According to the criminal complaint, in April 2019, officers from the Milwaukee Police Department responded to a ShotSpotter alert at an address on North 28th Street in Milwaukee. The officers observed a vehicle, with two people inside, parked two houses down from the address identified by ShotSpotter. Upon seeing the officers, the driver of the vehicle, later identified as Cole, leaned toward the front passenger floorboard. The officers believed he may be trying to retrieve a firearm, and ordered him to show his hands; instead, Cole put the vehicle into reverse and drove backwards. The vehicle struck a streetlight pole, which fell on the vehicle, rendering it inoperable.

Cole attempted to flee on foot but was apprehended and taken into custody. The officers discovered a 9mm handgun loaded with hollow-point bullets in the area of the vehicle where Cole had been reaching.

Cole was charged with possession of a firearm by a felon, obstructing an officer, and carrying a concealed weapon. He entered into a plea agreement with the State, where in exchange for his guilty plea for being a felon in possession of a firearm, the State would recommend three years of initial confinement followed by two years of extended supervision, to be served concurrently with any other sentences Cole was serving. The other two counts were to be dismissed but read in at sentencing.

The trial court accepted Cole's plea and imposed a sentence consisting of three years of initial confinement followed by two years of extended supervision, to be served consecutively to his revocation sentence. This no-merit appeal follows.

In the no-merit report, appellate counsel addresses two issues: whether there would be arguable merit to appealing the validity of Cole’s plea; and whether there would be arguable merit to a claim that the trial court erroneously exercised its discretion in sentencing Cole. We agree with appellate counsel’s analysis that there would be no arguable merit to an appeal of either of these issues.

With regard to Cole’s pleas, the plea colloquy by the trial court complied with the requirements set forth in WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the trial court confirmed that Cole signed and understood the plea questionnaire and waiver of rights form, which further demonstrates that Cole’s plea was knowingly, voluntarily, and intelligently entered. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987).

With regard to sentencing, the record reflects that the trial court considered relevant sentencing objectives and factors. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In particular, the court observed that this case involves two of the “primary crime issues” in Milwaukee: gun violence and reckless driving. The court noted that it had contemplated imposing a longer sentence than the State’s recommendation, but had also taken into account Cole’s revocation period in imposing this sentence to run consecutively, which is within its discretion. See *State v. Ramuta*, 2003 WI App 80, ¶24, 261 Wis. 2d 784, 661 N.W.2d 483.

Furthermore, the five-year sentence imposed by the trial court is within the ten-year maximum authorized by law, see WIS. STAT. §§ 941.29(1m)(a), 939.50(3)(g) (2019-20), and

therefore, there would be no arguable merit to a claim that Cole's sentence is unduly harsh or unconscionable. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Cole further in this appeal.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Cole 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