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DISTRICT I

March 28, 2023

To:

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

2021AP312-CRNM State of Wisconsin v. Brandon Glenn Lewis (L.C. # 2017CF4634)

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).

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

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

we 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, officers from the Milwaukee Police Department responded to a report of shots fired in the area of North Buffum Street. Upon arriving in the area, the officers saw a group of people having a bonfire in the front yard of a residence on North Buffum and asked if they had seen anyone shooting a gun; they responded that they had not. The officers also asked whether anyone in the group lived at the residence, to which they all responded they did not.

While speaking with the group, one of the officers observed a box of ammunition on the porch of the residence at that top of the steps, with several unfired cartridges next to it. The officer asked the group if anyone owned a gun, to which they all replied that they did not. The officer then walked up the steps and saw two males hiding on the porch, one of whom was identified as Lewis.

In plain view on the porch was a 9mm handgun with a loaded magazine, within reach of the other male who was hiding there. Both males were secured and removed from the porch. A .44 magnum revolver was then found in a plastic dog food container next to where Lewis had been hiding. That revolver was also loaded, and there were three spent casings in the container.

Lewis was on probation at the time from a previous case, and was prohibited from possessing a firearm. He was arrested and charged with being a felon in possession of a firearm.

Lewis filed a motion to suppress the gun evidence on the grounds that the investigatory stop of the people at the residence was unlawful, and that the subsequent search of the porch and

the dog food container was also unlawful. The State responded that Lewis did not have standing to challenge the search of the porch because he did not live there and had not established that he was staying at the residence, and therefore, he had not shown that he had any reasonable expectation of privacy.

A hearing was scheduled on the motion. Lewis had intended to call a witness who lived at the residence to provide information regarding Lewis's connection to the home. However, that witness did not appear; it was discovered that he had an open arrest warrant, which was the likely reason for his non-appearance. Lewis's trial counsel requested an adjournment, but the trial court noted that the witness would not likely appear at an adjourned hearing either. The court, therefore, denied the request for an adjournment. Furthermore, the court found that Lewis did not have standing to challenge the search of the porch, and therefore, denied his suppression motion.

Lewis then opted to resolve the matter with a plea. Pursuant to the plea agreement, Lewis pled guilty to the charge of being a felon in possession of a firearm, with the State recommending a sentence of three years of initial confinement, followed by three years of extended supervision, to be served consecutively to his revocation sentence that he was currently serving. The trial court accepted Lewis's plea and followed the State's sentencing recommendation. This no-merit appeal follows.

Appellate counsel addresses three issues in the no-merit report: whether there would be any arguable merit to challenging the trial court's denial of Lewis's motion to suppress based on his lack of standing; whether there was a basis for Lewis to withdraw his guilty plea because it was not knowingly, voluntarily, and intelligently entered, or because it was not supported by a

factual basis; and whether there would be arguable merit to a claim that the trial court erroneously exercised its discretion in sentencing Lewis.

With regard to the first issue regarding standing to challenge the search, "standing exists when an individual has a reasonable expectation of privacy" for the area that was searched. ***State v. Bruski***, 2007 WI 25, ¶22, 299 Wis. 2d 177, 727 N.W.2d 503. The person challenging the search "bears the burden of proving that he or she had a reasonable expectation of privacy." ***Id.***

In evaluating whether there was a legitimate expectation of privacy, the court may consider several factors, including whether the accused "had a property interest in the premises" that was searched, and whether the accused had "complete dominion and control" over the premises and the "right to exclude others." ***Id.***, ¶24. Furthermore, the court is to consider the totality of the circumstances in making this determination. ***Id.***

As appellate counsel points out, Lewis did not even allege that he had standing in his suppression motion. At the suppression hearing, Lewis conceded that the house on Buffum Street was not his primary residence, and further, he was unable to provide any evidence to establish his connection with the Buffum Street residence that would demonstrate that he had a reasonable expectation of privacy there to establish that he had standing to challenge the search of the porch. Therefore, we agree with appellate counsel that there would be no arguable merit to challenge of the trial court's decision to deny his motion to suppress.

The next issue addressed by appellate counsel is whether there is an arguably meritorious claim for plea withdrawal. There is a constitutional requirement that a guilty plea be "affirmatively shown" to be knowing, voluntary, and intelligent. ***State v. Bangert***, 131 Wis. 2d

246, 260, 389 N.W.2d 12 (1986). To ensure that this requirement is met, the trial court must engage the defendant in a personal colloquy, during which the court must fulfill certain duties to ascertain the defendant's understanding of the charge against him or her, and the constitutional rights that are waived upon entering a plea. ***State v. Brown***, 2006 WI 100, ¶¶28-29, 35, 293 Wis. 2d 594, 716 N.W.2d 906. If these duties are not fulfilled, the defendant may move to withdraw his or her plea. ***Id.***, ¶36.

The record reflects that both the State and the defense stipulated to the trial court using the facts in the criminal complaint as a factual basis for Lewis's plea. Appellate counsel points out that the trial court did not explicitly review the elements of the offense with Lewis; rather, it confirmed that trial counsel had reviewed the elements of the charge with Lewis, and that Lewis had signed a plea questionnaire and waiver of rights form and addendum, which had the jury instructions for the charge attached. These forms may be utilized to "lessen[ ] the extent and degree of the colloquy otherwise required between the trial court and the defendant[.]" ***State v. Hoppe***, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation omitted).

Additionally, appellate counsel notes that the trial court failed to fulfill the requirement of ascertaining that there had been no promises or threats made to induce Lewis to enter the plea. *See* ***Brown***, 293 Wis. 2d 594, ¶35. However, in order to demonstrate an arguable basis for seeking plea withdrawal due to this omission, it would have to be alleged that Lewis did not in fact understand the information that should have been provided at the plea hearing. *See* ***Bangert***, 131 Wis. 2d at 274. Appellate counsel represents that he is not able to make any such allegation. Therefore, in the absence of an objection from Lewis, we accept this representation by counsel, and conclude that there are no issues of arguable merit relating to Lewis's plea.

The last issue addressed in the no-merit report is whether there could be arguable merit to a claim that the trial court erroneously exercised its sentencing discretion. The record reflects that the 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. Specifically, the trial court discussed that Lewis had a prior record, which included several felonies, and thus, he had been warned "numerous times" that he was prohibited from possessing a firearm. The court also noted the strength of the State's case, in that there was fingerprint evidence that linked Lewis to the gun that was found.

Furthermore, the six-year sentence imposed by the trial court is well within the maximum sentence of ten years authorized by law, *see* WIS. STAT. §§ 941.29(1m)(a), 939.50(3)(g) (2017-18), and thus, is not unduly harsh or unconscionable, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. Therefore, this court agrees with appellate counsel that there would be no arguable merit to a claim that the trial court erroneously exercised its sentencing discretion.

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 Lewis further in this appeal.

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 Jaymes K. Fenton is relieved of further representation of Lewis 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