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**DISTRICT I**

July 25, 2023

To:

Hon. Janet C. Protasiewicz  
Circuit Court Judge  
Electronic Notice

Brent Simerson  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
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Racine Correctional Inst.  
P.O. Box 900  
Sturtevant, WI 53177-0900

Winn S. Collins  
Electronic Notice

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

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2021AP1728-CRNM      State of Wisconsin v. Deron Joseph Berry-Williams  
(L.C. # 2017CF2048)

Before Brash, C.J., Donald, P.J., and White, 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).**

Deron Joseph Berry-Williams appeals the judgment convicting him of homicide by negligent handling of a dangerous weapon as a party to a crime with use of a dangerous weapon.<sup>1</sup>

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<sup>1</sup> The judgment appears to include a scrivener's error. The State, in the amended information underlying Berry-Williams' guilty plea, charged him with homicide by negligent handling of a dangerous weapon as a party to a crime with use of a dangerous weapon. WISCONSIN STAT. § 939.63(1)(b) (2011-12) provides for an increased penalty where a person possesses, uses, or threatens to use a dangerous weapon while committing a felony where the maximum term of imprisonment is more than five years or is a life term. The increased penalty in § 939.63 "does not apply if possessing, using or threatening to use a dangerous weapon is an essential element of the crime charged," as was the case here. See § 939.63(2); see also WIS. STAT. § 940.08(1).

(continued)

His appellate counsel, Brent Simerson, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Berry-Williams was advised of his right to file a response and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The complaint detailed an escalating conflict between two groups of individuals stemming from a drug deal gone bad. First, “bad” cocaine was sold from one individual to another. Then, after a pound of marijuana allegedly was stolen from him, Rufus Dawson enlisted Berry-Williams and Cartrell Romel Kimble to kill one or more of the robbers.

In August 2012, Berry-Williams and Kimble approached a porch occupied by at least four men and started shooting. One victim, Leneir Johnson, died at the scene and another victim suffered injuries that were not life threatening. Berry-Williams and Kimble then fled on foot. A witness positively identified Berry-Williams and Kimble running through yards following the shooting, saying he was “absolutely certain” it was them.

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There was no mention of the dangerous-weapon penalty enhancer during the plea colloquy where Berry-Williams pled guilty to negligent handling of a dangerous weapon as a party to a crime. The judgment of conviction, however, indicates that Berry-Williams pled guilty to homicide by negligent handling of a dangerous weapon as a party to a crime and additionally references the dangerous-weapon penalty enhancer in the description of the charge. We direct that, upon remittitur, the judgment of conviction be amended to remove the reference to § 939.63(1)(b) in the description of the crime. *See State v. Prihoda*, 2000 WI 123, ¶¶26-27, 239 Wis. 2d 244, 618 N.W.2d 857.

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

The complaint further alleged that following the death of Johnson, Regis Grice and others “held resentment” against Dawson, who they blamed for the homicide. Approximately one year after Johnson’s death, Grice shot and killed Dawson.

The State initially charged Berry-Williams with first-degree intentional homicide and first-degree recklessly endangering safety, both as a party to the crime and with use of a dangerous weapon. The State charged Kimble and Grice in the same complaint.

Pursuant to a plea agreement, Berry-Williams pled guilty to the amended charge of homicide by negligent handling of a dangerous weapon as a party to the crime. In exchange, the State recommended that the circuit court sentence Berry-Williams to ten years of imprisonment broken down as five years of initial confinement followed by five years of extended supervision. The State agreed that it would remain silent as to whether the circuit court should impose a concurrent or consecutive sentence to the one that Berry-Williams was serving at the time.

The circuit court accepted the plea and ordered Berry-Williams to serve a consecutive sentence comprised of five years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court erred when it denied Berry-Williams’s motion to suppress. *See* WIS. STAT. § 971.31(10) (providing for review of orders denying motions to suppress evidence notwithstanding guilty pleas). We agree with the no-merit report’s conclusion that this issue is without arguable merit and will not address it further.

The no-merit report additionally addresses the validity of Berry-Williams’s plea. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of

counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, *Bangert*, 131 Wis. 2d at 261-62, and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There would be no arguable merit to a claim that Berry-Williams's plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report analyzes whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing 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, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, see *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider other additional factors. 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 *Ziegler*, 289 Wis. 2d 594, ¶23. We will sustain a circuit court's exercise of sentencing discretion if the sentence imposed was one that a reasonable judge might impose, even if this court or another judge might have imposed a different sentence. See *Odom*, 294 Wis. 2d 844, ¶8. Here, the circuit court appropriately considered relevant sentencing objectives and factors, and imposed a reasonable sentence. There would be no arguable merit to a challenge to the court's sentencing discretion.

Our review of the record discloses no other potential issues for appeal. To the extent we did not specifically address an issue raised in the no-merit report, this court has concluded it

lacks sufficient merit or attention to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Berry-Williams further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brent Simerson is relieved from further representing Deron Joseph Berry-Williams in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*