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DISTRICT I

November 14, 2023

To:

Hon. David L. Borowski
Circuit Court Judge
Electronic Notice

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

Carl W. Chesshir
Electronic Notice

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Sirrob L. Green 665387
Waupun Correctional Inst.
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Waupun, WI 53963-0351

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

2020AP1803-CRNM State of Wisconsin v. Sirrob L. Green (L.C. # 2019CF109)

Before White, C.J., Donald, P.J., and Geenen, 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).

Sirrob L. Green appeals from a judgment, entered upon his guilty pleas, convicting him of one count of first-degree recklessly endangering safety with use of a dangerous weapon; one count of first-degree recklessly endangering safety with use of a dangerous weapon as a party to a crime; and one count of fleeing from police while operating a vehicle. Appellate counsel, Attorney Carl W. Chesshir, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22),[1] and a supplemental report pursuant to

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

our order. Green was advised of his right to file a response, but he has not responded. We have independently reviewed the record and the reports, and we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

A criminal complaint filed in January 2019 charged Green with three counts of first-degree recklessly endangering safety with a dangerous weapon, one of which included the party to a crime modifier; one count of fleeing or eluding an officer; and one count of felony bail jumping. The first reckless endangerment charge was based on the allegations of D.Y. He reported that on December 19, 2018, Nathaniel Wilson and another man entered the store where D.Y. was shopping. Because D.Y. had issues with Wilson, he left the store. As he began running away, D.Y. heard gunshots in his direction. D.Y. later identified Green from a photo array as the man accompanying Wilson. Surveillance video also showed Green firing a gun, and six spent casings were recovered from the scene.

The remaining counts arose from an incident on January 3, 2019. Wauwatosa officers conducting surveillance heard gunshots and observed a Dodge Caliber in a nearby parking lot. An individual, Wilson, was sitting on the passenger window frame and shooting a gun over the car towards someone on the sidewalk. The officers pursued the vehicle, which "traveled at a high rate of speed weaving in and out of traffic." A marked squad car joined the pursuit, during which the Caliber drove into oncoming traffic, ran several red lights, almost side-swiped a school bus, and reached speeds in excess of 100 miles per hour. The Caliber then drove through a set of safety cones at a school crossing, with children standing at the corner, before hitting a curb and losing control. Wilson and the driver, Green, fled from the car but were apprehended. Four spent casings were recovered from the parking lot and were determined to have been fired from the same gun as the six casings recovered on December 19.

To resolve the case, Green agreed to a plea agreement. Green would plead guilty to the first-degree recklessly endangering safety charge involving D.Y., the first-degree recklessly endangering safety charge as party to a crime for the parking lot shooting, and the fleeing charge. In exchange, the other two counts would be dismissed and read in, as would a fleeing charge from another case.[2] The circuit court accepted Green's pleas and imposed three years of confinement and four years extended supervision on each reckless endangerment count, to be served consecutively, plus a concurrent one year of initial confinement and one year of extended supervision for the fleeing. Green appeals.

The no-merit report first discusses "whether the trial court properly accepted Green's guilty plea[s]." A defendant's guilty plea must be knowingly, intelligently, and voluntarily entered. ***State v. Pegeese***, 2019 WI 60, ¶21, 387 Wis. 2d 119, 928 N.W.2d 590. "Wisconsin imposes certain statutory and common law duties on circuit courts" conducting plea colloquies to ensure that a defendant's plea is validly given. ***Id.*** One of these duties is to "[a]ddress the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge[.]" WIS. STAT. § 971.08(1)(a).

"A defendant's understanding of the nature of the charge must 'include an awareness of the essential elements of the crime.'" ***State v. Brandt***, 226 Wis. 2d 610, 619, 594 N.W.2d 759 (1999) (citation omitted). There are multiple methods by which the defendant's understanding of the charges may be ascertained, depending on the circumstances of the situation. *See* ***State v. Bangert***, 131 Wis. 2d 246, 268, 389 N.W.2d 12 (1986). Jury instructions are frequently utilized

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[2] Milwaukee County Circuit Court case No. 2018CF318.

for this task, and jury instructions were filed with Green's plea questionnaire. However, the jury instructions attached to Green's questionnaire were not the instructions for first-degree recklessly endangering safety, the dangerous weapon enhancer, or party to a crime liability. Instead, the attached instructions were for endangering safety by negligent operation or handling of a dangerous weapon.

A defendant who files a motion to withdraw his plea after sentencing is entitled to withdraw his plea as a matter of constitutional right if he demonstrates that he did not understand the elements of the crimes to which he pled. ***State v. Carter***, 131 Wis. 2d 69, 73-80, 389 N.W.2d 1, *cert. denied*, 479 U.S. 989 (1986). Accordingly, we directed appellate counsel to file a supplemental report that explained why Green could not pursue an arguably meritorious motion for plea withdrawal.

In the supplemental report, appellate counsel explained that he spoke with Green's trial attorney of record, who said that before the plea hearing, she personally reviewed with Green the correct elements for the charge of first-degree recklessly endangering safety and explained his criminal liability as a party to a crime. Appellate counsel then spoke with Green, who did not dispute trial counsel's statements.

Appellate counsel also informed Green that following a successful plea withdrawal, any agreements made for the plea may be rescinded and the parties returned to the positions they occupied at the time they believed they had entered into valid plea agreements. ***State v. Deilke***, 2004 WI 104, ¶26, 274 Wis. 2d 595, 682 N.W.2d 945. Green then informed appellate counsel that he was not interested in pursuing plea withdrawal, only sentence modification.

In light of the supplemental report, there is no arguable basis for challenging the validity of Green's pleas. Green completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses. The form correctly acknowledged the maximum penalties Green faced and the form, along with an addendum, also specified the constitutional rights Green was waiving with his plea. ***State v. Bangert***, 131 Wis. 2d 246, 262, 271, 389 N.W.2d 12 (1986).

Our review of the record—including the plea questionnaire and waiver of rights form and plea hearing transcript—further 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. Thus, there is no arguable merit to challenging the validity of Green's pleas.

The no-merit report also addresses "whether the trial court erroneously exercised its discretion in sentencing Green." ***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, ***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 several additional factors. ***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. ***Ziegler***, 289 Wis. 2d 594, ¶23.

Our review of the record satisfies us that the circuit court appropriately considered relevant sentencing objectives and factors. The concurrent and consecutive sentences totaling fourteen years' imprisonment are well within the twenty-eight and one-half-year range authorized by law, ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and are 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). Thus, this court is satisfied that the no-merit report properly analyzes this issue as without arguable merit.[3]

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 Carl W. Chesshir is relieved of further representation of Green in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals

[3] As noted, Green told counsel he was hoping for sentence modification, but the record reveals no arguably meritorious basis for pursuing such a motion.