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DISTRICT I

December 27, 2023

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

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

Marcella De Peters
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Kelvin Zarkee Love 559961
Stanley Correctional Inst.
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Stanley, WI 54768

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

2022AP67-CRNM	State of Wisconsin v. Kelvin Zarkee Love (L.C. # 2018CF5239)
2022AP68-CRNM	State of Wisconsin v. Kelvin Zarkee Love (L.C. # 2019CF2726)
2022AP69-CRNM	State of Wisconsin v. Kelvin Zarkee Love (L.C. # 2019CF3906)

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).

Kelvin Zarkee Love appeals from judgments, entered upon his guilty pleas, convicting him of robbery with the use of force as a party to a crime, burglary, and attempted second-degree sexual assault. Appellate counsel, Marcella De Peters, has filed a consolidated no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Love was advised of his right to file a response but he has not responded. Upon this court's

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

independent review of the records as mandated by ***Anders*** and counsel's report, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgments.

On November 3, 2018, the State charged Love with one count of robbery with the use of force as a party to a crime. The charge was based on the report of the seventy-two-year-old victim, G.L.J., who reported to police that around 7:00 p.m. on October 24, 2018, a man he knew as Daniel arrived at his residence, asking for a ride and to borrow money. Daniel was accompanied by a man, later identified as Love, whom G.L.J. did not know. G.L.J. spoke with Daniel in the hallway near the entrance to his residence. When G.L.J. turned to enter his home, Love punched him in the face, causing him to fall to the floor. Love continued to punch G.L.J., then rummaged through his pockets. Love took G.L.J.'s wallet, cell phone from where it had fallen nearby, and several bank cards from G.L.J.'s home. Shortly after Daniel and Love fled the building, G.L.J. saw them driving off in his car. On October 30, 2018, Love was arrested in an unrelated incident. Several of G.L.J.'s belongings, including his driver's license, were recovered from Love in a search incident to the arrest. In an interview with police, Love acknowledged pushing G.L.J. to the ground and taking his wallet and car keys. After Love's initial appearance on November 4, 2018, he was released from custody on a $5,000 signature bond.

On June 22, 2019, the State charged Love with two counts of burglary, one count of disorderly conduct, and one count of felony bail jumping. These charges stem from incidents, all of which were captured on surveillance video, at a Milwaukee restaurant and a nearby hotel. Police were dispatched to the restaurant on or about May 16, 2019. An employee explained that he was watching surveillance video and observed two men stealing beer from the business's

basement beer cooler around 4:46 a.m. Police were again sent to the restaurant a month later, on June 19, 2019, when surveillance video showed two subjects entering the basement, forcing their way into a cabinet, and taking eight bottles of liquor valued at approximately $340. Also on June 19, police responded to a Milwaukee hotel regarding complaints from the valet about two persistent panhandlers, one of whom was Love, who refused to leave when asked and were following a female employee. When a third employee exited the hotel to assist the valet, Love "tapped [the employee] on the face" while holding a liquor bottle. When Love was shown the surveillance videos, he identified himself in each video and admitted to taking the beer and liquor. He also admitted that he was at the hotel and that the bottle in his hand was one taken from the restaurant. After an initial appearance on June 23, 2019, Love was released on a $2,500 signature bond.

On September 3, 2019, the State charged Love with attempted second-degree sexual assault and felony bail jumping. These charges were based on the report of victim T.J. In the early morning hours of August 30, 2019, T.J. was walking home. When she opened the locked exterior door of her apartment building, a man grabbed her from behind, put his hand over her mouth, and forced her into the stairwell next to the door. As T.J. screamed for help, the man lifted her skirt, rubbed her vagina, and began "dry humping" her. T.J. continued to struggle and call for help; eventually, the man just stopped and fled out the door. Parts of the attack were captured on surveillance video. T.J. identified Love as her assailant from a photo array later in the day. When interviewed, Love acknowledged lifting T.J.'s skirt and trying to force her to have intercourse with him. Cash bail was set at $100,000.

Love eventually agreed to resolve these cases through a plea bargain. In exchange for his guilty pleas to the robbery, one burglary, and the attempted sexual assault charges, the State agreed to dismiss and read in the remaining charges.[2] The State also agreed to make a global sentence recommendation limited to twenty-seven years' imprisonment. The circuit court accepted Love's pleas and later imposed consecutive sentences of nine and one-half years' imprisonment for the robbery, four years' imprisonment for the burglary, and twenty years' imprisonment for the attempted sexual assault.[3] Love appeals.

Counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Love's guilty pleas and whether the circuit court appropriately exercised its sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

There is no arguable basis for challenging whether Love's pleas were knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Love completed plea questionnaire and waiver of rights forms, in which he acknowledged that his attorney had explained the elements of the offenses. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Jury instructions for each offense were also submitted with the questionnaires. The forms correctly acknowledged the maximum

[2] Love had also been charged in Milwaukee County Circuit Court case No. 2019CF3948 with felony bail jumping and obstructing an officer, based on allegations that he fled when police approached him to discuss the sexual assault. Because all of the charges in that case were dismissed and read in under the plea agreement, the case is not directly before us on appeal.

[3] The Honorable Jeffrey A. Wagner conducted plea proceedings. The Honorable Stephanie G. Rothstein conducted sentencing proceedings.

penalties Love faced and the forms, along with their addenda, also specified the constitutional rights Love was waiving with his pleas. *See* ***Bangert***, 131 Wis. 2d at 262, 271.

The circuit court also conducted a plea colloquy as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. One of the circuit court's obligations in taking a plea is to establish the defendant's understanding of the range of punishments he or she faces by entering a plea. ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The no-merit report notes that during the colloquy, the circuit court misstated two of the potential sentences. It told Love that the sexual assault charge "carries up to $15,000 and/or 20 years," when the maximum potential fine is $50,000. It also stated that the burglary charge "carries up to 25 years and/or 12 and a half years," when the penalty is up to a $25,000 fine and twelve and one-half years' imprisonment.

However, not "every small deviation from the circuit court's duties" requires an evidentiary hearing. ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64. In order to challenge the circuit court's failure to follow its duties for accepting a plea, a defendant must also be able to allege "that in fact the defendant did not know or understand the information that should have been provided at the plea colloquy." ***State v. Howell***, 2007 WI 75, ¶27, 301 Wis. 2d 350, 734 N.W.2d 48. In the no-merit report, counsel explains that Love would be unable to raise a meritorious challenge to the misstated sentences because he was correctly advised of the penalties during each initial appearance; the guilty plea questionnaires each correctly list the penalties; and, at the sentencing hearing, which began with the circuit court reviewing the correct penalties, Love agreed that he understood the penalties for each charge.

Ultimately, the plea questionnaire and waiver of rights forms and addenda, the copies of jury instructions, and the circuit court's colloquy combined to appropriately advise Love of the elements of his offenses and the potential penalties he faced, and otherwise sufficiently satisfied the requirements of ***Bangert*** and ***Hampton*** for ensuring that a plea is knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the pleas' validity.

The other issue counsel raises is whether 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, ***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 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 records confirms that the court appropriately considered relevant sentencing objectives and factors. The maximum possible sentence Love could have received was forty-seven and one-half years' imprisonment. The consecutive sentences totaling thirty-three and one-half years' imprisonment are well within the range authorized by law, *see* ***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). There is no arguable merit to a challenge to the sentencing court's discretion.

Our independent review of the records reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved of further representation of Love in these matters. *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