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DISTRICT I

January 3, 2024

To:

Hon. Jeffrey A. Wagner
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

Daniel N. Moore 691583
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2022AP1286-CRNM State of Wisconsin v. Daniel N. Moore (L.C. # 2019CF5081)

Before White, C.J., Geenen and Colón, 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).

Daniel N. Moore appeals from a judgment, entered on his guilty plea, convicting him of first-degree reckless homicide. Appellate counsel, Marcella De Peters, 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] Moore was advised of his right to file a response, but he has not responded. 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.

On October 19, 2019, Milwaukee police responded to a shooting call. They found S.H., deceased, in the front passenger seat of a parked car with five bullet holes "in a tight grouping" in the upper left side of his head. A fingerprint recovered from the exterior driver's side rear window frame matched to Moore, who turned himself in when he learned police wanted to speak with him. Moore admitted to detectives at least twice that he had committed the homicide, though he claimed that S.H. had pointed the gun at him first. Moore also said that S.H. had killed someone else a few hours earlier, and that the family of that victim had approached Moore, threatening Moore's family if he did not kill S.H. The State charged Moore with one count of first-degree intentional homicide with use of a dangerous weapon.

Moore reached a plea agreement with the State. In exchange for a guilty plea, the State agreed to amend the charge to first-degree reckless homicide and to recommend no more than thirty years of initial confinement at sentencing. The State also agreed to dismiss a pending fleeing charge in another case. The circuit court accepted Moore's plea and later sentenced him to thirty-eight years of imprisonment, bifurcated as twenty-eight years of initial confinement and ten years of extended supervision. Moore subsequently filed a postconviction motion for sentence modification under ***State v. Doe***, 2005 WI App 68, ¶10, 280 Wis. 2d 731, 697 N.W.2d 101. The State joined the request and stipulated to a four-year reduction in initial confinement. The circuit court granted the motion and amended the sentence accordingly. Moore now appeals his conviction.

The first potential issue discussed in the no-merit report is whether Moore should be allowed to withdraw his plea because it was not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions for first-degree reckless homicide that were initialed by Moore, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The no-merit report properly analyzes this issue; there is no arguable merit to a claim that Moore's plea was anything other than knowing, intelligent, and voluntary.

The other potential issue discussed in the no-merit report is whether this court should remand the matter for resentencing because the circuit court erroneously exercised its sentencing discretion. 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, ***State v. Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197. In seeking to fulfill the sentencing objectives, the court should consider several 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. ***Id.***

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The thirty-eight-year sentence initially imposed is well within the sixty-year range authorized by law. *See* WIS. STAT. §§ 940.02(1), 939.50(3)(b). "A sentence

well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable." ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence is also 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). The no-merit report properly analyzes this issue as well; there is no arguable merit to a challenge to the circuit court's sentencing discretion.[2]

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 Marcella De Peters is relieved of further representation of Moore 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

[2] There is also no arguable merit to challenging the four-year sentence reduction as somehow insufficient or an improper exercise of discretion because the length of the reduction was the result of the parties' stipulation. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) ("Because defendant affirmatively approved the sentence, he cannot attack it on appeal.").