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**DISTRICT I**

January 17, 2024

To:

Hon. Glenn H. Yamahiro  
Circuit Court Judge  
Electronic Notice

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

Danielle M. Gorsuch  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Timothy Shawn Wilke 509837  
John C. Burke Correctional Center  
P.O. Box 900  
Waupun, WI 53963-0900

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

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2022AP1272-CRNM      State of Wisconsin v. Timothy Shawn Wilke (L.C. # 2019CF3265)

Before Donald, P.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).**

Timothy Shawn Wilke appeals from a judgment, entered on his guilty plea, convicting him on one count of substantial battery. Appellate counsel, Danielle M. Gorsuch, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).<sup>1</sup> Wilke 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

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<sup>1</sup> 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.

Cudahy police were dispatched to a bar on May 5, 2019, for a fight complaint. They spoke with bar owner D.S. and reviewed surveillance video. A brawl broke out after D.S. asked a group to leave the bar due to one of the patrons being underage. Wilke, who was with the group, hit D.S. several times, breaking D.S.'s glasses and causing D.S. to require multiple stitches to close a wound to his lower eyelid. Police searched Facebook, starting with names obtained from a vehicle registration and an open bar tab secured with a credit card, and identified Wilke as the assailant.

The State charged Wilke with one count of substantial battery as a party to a crime. Wilke eventually agreed to plead guilty to the charge; in exchange, the State would recommend a sentence of time in the House of Correction<sup>2</sup> with the defense free to argue. The circuit court conducted a plea colloquy and accepted Wilke's plea, and later sentenced him to twelve months of initial confinement and eighteen months of extended supervision. Wilke appeals.

The only issue discussed in the no-merit report 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. The no-merit report notes that Wilke had two concerns about his sentence: he felt that his sentence was extreme for the conduct that led to the charge and conviction, and he felt that the court had based its sentence on a prior case that was dismissed without prejudice.

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<sup>2</sup> The House of Correction has since been renamed the Community Reintegration Center.

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.

In its sentencing comments, the circuit court noted that Wilke—who, at the time of sentencing, was thirty-two years old—had a record spanning at least sixteen years and a “wide gamut of crimes.” It noted that Wilke was “in the bar here with an underage person” and that, as Wilke had indicated during allocution, his alcohol use meant he “did not perceive reality as it existed and [he] committed the battery to this fellow when he didn’t do anything except try to enforce the law with regard to not having underage people in the bar.” The circuit court further explained that “the ship of probation has long since sailed” because Wilke had “numerous revocations” during previous terms of supervision, and the circuit court was “not sure exactly what the problem is here with [Wilke] getting it together.”

Although this case did not involve a firearm, one of Wilke’s prior cases had been a charge of first-degree reckless injury, stemming from an August 2020 shooting, which was dismissed. The circuit court here noted that it was not sentencing Wilke as though it believed he had shot the person but would consider that probable cause had been found; specifically, Wilke had been on probation for a 2012 weapon-related conviction at the time of this offense, so the

circuit court observed that the August 2020 case, although dismissed, was “the second time that probable cause has been found for [Wilke] shooting somebody.”

The test on appeal is only whether sentence discretion was properly exercised, not whether this court would have imposed the same sentence. *Odom*, 294 Wis. 2d 844, ¶8. Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. As part of its assessment of the defendant’s character, the circuit court is permitted to consider uncharged and unproven offenses, as well as facts related to offenses for which the defendant has been acquitted. *State v. Frey*, 2012 WI 99, ¶47, 343 Wis. 2d 358, 817 N.W.2d 436. The maximum possible sentence Wilke could have received was three and one-half years of imprisonment. The sentence totaling two and one-half years of imprisonment is 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 is 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 challenging the sentencing court’s exercise of discretion.

Although the no-merit report does not discuss whether there is any arguable merit to challenging the validity of Wilke’s plea, we address the issue for completeness. To be valid, a guilty plea must be knowing, intelligent, and voluntary. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). A number of requirements have been established for circuit courts accepting guilty pleas as a way to help ensure such pleas are properly entered by the defendant. *See, e.g., WIS. STAT. § 971.08; State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906 (listing requirements).

Our review of the record satisfies us that there is no arguable merit to challenging the validity of Wilke's plea. The circuit court's colloquy met the requirements of *Brown* and WIS. STAT. § 971.08. Further, Wilke 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 offense. The questionnaire correctly identified the maximum penalties Wilke faced and the form, along with an addendum, also specified the constitutional rights Wilke was waiving with his plea. *See Bangert*, 131 Wis. 2d at 262, 271. The record reflects a knowing, intelligent, and voluntary plea, and there is no arguable merit to claiming otherwise.

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 Danielle M. Gorsuch is relieved of further representation of Wilke in this matter. *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*