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DISTRICT II

Amended June 24, 2024
June 19, 2024

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
Electronic Notice

LeAnne Karls
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

David Malkus
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Brian J. Horn #539901
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP2004-CRNM State of Wisconsin v. Brian J. Horn (L.C. #2022CF127)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Brian J. Horn appeals from a judgment of conviction entered upon his no contest pleas to two counts of battery to a law enforcement officer. Horn's appellate counsel, David Malkus, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Horn received a copy of the report, was advised of his right to file a response, and has responded. We have independently reviewed the record, the no-merit report,

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

and the response, as mandated by *Anders*, and we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The State charged Horn with two counts of battery to a law enforcement officer, one count of attempting to disarm a peace officer, one count of resisting an officer, and one count of disorderly conduct. The State also applied the penalty enhancer for habitual criminality to each of the charges because of a separate conviction that had occurred within the previous five years. The complaint alleged that on June 20, 2022, Horn was taken to a hospital for an adverse reaction to methamphetamine. While at the hospital, Horn had a physical altercation with two police officers. Horn ultimately pled no contest to two counts of battery to a law enforcement officer. The remaining charges were dismissed and read in. The circuit court sentenced Horn to one year of initial confinement and two years of extended supervision for both counts, consecutive to one another and to any other sentence.

Appellate counsel's no-merit report addresses two issues: (1) whether the circuit court properly accepted Horn's no contest pleas; and (2) whether the court erroneously exercised its sentencing discretion. In his response, Horn essentially seeks sentence modification.

With regard to Horn's no contest pleas, our review of the record—including the plea questionnaire/waiver of rights form, the statement of negotiated plea, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking no contest pleas, pursuant to WIS. STAT. § 971.08(1), *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. These obligations exist specifically to help ensure the validity of any plea. We thus agree with appellate counsel's conclusion in the no-merit report that there is no arguable merit to seeking

plea withdrawal based on a claim that Horn's pleas were anything other than knowing, intelligent, and voluntary.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the court's 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. It must also 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 several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider 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 sentencing court's discretion. *Id.*

Our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors. The resulting sentences were within the potential maximums 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). Accordingly, Horn is not entitled to sentence modification.

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

Upon the foregoing therefore,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Brian J. Horn 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