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DISTRICT I

August 20, 024

To:

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Circuit Court Judge
Electronic Notice

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

Kathleen A. Lindgren
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Daniel James Corder 524144
Felmers O. Chaney Correctional Center
2825 N. 30th Street
Milwaukee, WI 53210

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

2023AP1939-CRNM State of Wisconsin v. Daniel James Corder (L.C. # 2022CF1931)

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).

Daniel James Corder appeals from his judgment of conviction entered after he pled guilty to possession with the intent to deliver heroin in an amount of three grams or less, and from the order denying his postconviction motion seeking sentence modification. His appellate counsel, Attorney Kathleen A. Lindgren, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Corder was advised of his right to file

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

a response, but he did not do so. Upon this court's independent review of the record as mandated by ***Anders***, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

Corder was charged in April 2022 after an officer from the West Allis Police Department observed a drug transaction involving a white Lincoln sedan in front of a known drug house. The officer, in a marked squad, followed the vehicle into the parking lot of a Walgreens and attempted a traffic stop. The vehicle attempted to reverse out of the parking lot but crashed into a tree; it then pulled forward and hit the squad. The driver was identified as Corder.

Corder was transported to the police department and strip searched. Officers observed contraband in Corder's groin area, but due to his "uncooperative nature," a second strip search had to be conducted. Officers recovered a baggie with 1.64 grams of heroin.

Other officers made contact with people at the residence where the drug transaction occurred. One of the occupants admitted to buying both heroin and cocaine from the person in the white Lincoln, whom she knew as "Richie." She also provided a phone number for Richie; when officers called the number, a cell phone that had been in Corder's possession rang. She also provided the packaging from the drug transaction—rolled up lottery tickets. Additional lottery tickets were recovered from Corder's vehicle. Other items recovered from the vehicle included several more cells phones, generic sandwich baggies, and a digital scale.

Corder was charged with possession with the intent to deliver heroin in an amount of three grams or less. He opted to resolve the charge with a plea, and was immediately sentenced. The circuit court imposed a sentence of one year of initial confinement followed by two years of extended supervision, to be served consecutively to a revocation term of two years of initial

confinement and four years of extended supervision. The court deemed Corder ineligible for the Challenge Incarceration Program (CIP) after noting that Corder was released early to extended supervision after completing the program while serving his sentence for a prior conviction, only to reoffend with the instant offense. However, the court granted him eligibility for the Substance Abuse Program (SAP) after nine months of incarceration.

Corder filed a postconviction motion seeking sentence modification relating to his eligibility for the CIP and SAP. Specifically, he requested that the circuit court deem him eligible for the CIP and remove the nine-month requirement for the SAP. The court rejected the requests, stating that Corder's motion did not set forth a clear legal basis for sentence modification, and that, even if his motion was liberally construed, Corder did not meet the requirements for modification. The court therefore denied his postconviction motion. This no-merit appeal follows.

In the no-merit report, appellate counsel addresses two issues: whether there would be arguable merit to appealing the validity of Corder's plea; and whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Corder. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of either of these issues.

Regarding the validity of Corder's plea, there is a constitutional requirement that a guilty plea be "affirmatively shown" to be knowing, voluntary, and intelligent. ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). To ensure that this requirement is met, the circuit court must engage the defendant in a personal colloquy, to ascertain the defendant's understanding of the charge against him or her and the constitutional rights that are waived upon

entering a plea. WIS. STAT. § 971.08; ***State v. Brown***, 2006 WI 100, ¶¶28-29, 35, 293 Wis. 2d 594, 716 N.W.2d 906. If this requirement is not fulfilled, the defendant may move to withdraw his or her plea. ***Id.***, ¶36.

Here, the plea colloquy by the circuit court substantially complied with the requirements set forth in WIS. STAT. § 971.08 and ***Brown***. We note, however, that the record reflects that the court did not directly verify during the colloquy that there had been no promises or threats made to induce Corder to enter the plea. *See* ***Id***, 293 Wis. 2d 594, ¶35. Nevertheless, Corder completed a plea questionnaire and waiver of rights form, in which he acknowledged that there were no promises or threats made to him to induce the plea. Although not a substitute for a colloquy, the plea questionnaire and waiver of rights form "lessen[s] the extent and degree of the colloquy otherwise required between the [circuit] court and the defendant[.]" ***State v. Hoppe***, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation omitted).

Furthermore, the circuit court confirmed that Corder read, signed, and understood the plea questionnaire and waiver of rights form. This demonstrates Corder's understanding of the of the constitutional rights being waived?, to further establish that his plea was entered knowingly, voluntarily, and intelligently. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We therefore agree with appellate counsel that the record does not suggest there would be an arguable basis to challenge Corder's plea.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the court's discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a circuit 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. To fulfill the sentencing objectives, the circuit court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional, permissible factors it may wish to consider. ***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 court's discretion. ***Id.***

The record reflects that the circuit court properly exercised its discretion in considering the requisite sentencing objectives and relevant factors when it sentenced Corder. It noted that heroin is "viciously addictive" and that Corder's dealing was "spreading this poison in our community." The court further considered Corder's attempt to flee when he was arrested, and his uncooperativeness during the strip search. Additionally, the court observed that Corder admitted to being an addict and was dealing small amounts of drugs in order to "feed his habit," and recognized that Corder had pled guilty and accepted responsibility for the offense. These are all proper and relevant factors for consideration at sentencing. *See* ***id.*** Furthermore, Corder's sentence is within the statutory maximum, and is therefore presumed not to be unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

We have also considered whether there would be arguable merit to a claim regarding Corder's CIP and SAP eligibility, relating to his request for sentence modification in his postconviction motion. A circuit court exercises its discretion when determining a defendant's eligibility for these programs, and we will sustain the circuit court's conclusions if they are supported by the record and the overall sentencing rationale. ***State v. Owens***, 2006 WI App 75,

¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. §§ 973.01(3g)-(3m), 302.05(3)(a).[2] At sentencing, the circuit court specifically considered that Corder's current offense was committed while he was on extended supervision for a prior conviction which included drug offenses, after he had completed the CIP and gotten released early to extended supervision in that case. This indicates an appropriate exercise of the court's discretion. *See* ***id.*** We therefore agree with appellate counsel that the record does not indicate there would be arguable merit to a challenge of Corder's sentence.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Corder further in this appeal.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kathleen A. Lindgren is relieved of further representation of Corder in this matter. *See* WIS. STAT. RULE 809.32(3).

[2] The SAP was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

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

Samuel A. Christensen
Clerk of Court of Appeals