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

2012AP2734-CRNM State of Wisconsin v. Ryan A. Dobbie (L.C. #2011CF693)

Before Curley, P.J., Fine and Kessler, JJ.

Ryan A. Dobbie appeals from a judgment of conviction, entered upon his guilty plea, on one count of false imprisonment as an act of domestic violence. Appellate counsel, Katie York, Esq., has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Dobbie 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 conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

Dobbie went to his estranged wife's home; a no-contact order may or may not have been in place.[1] Dobbie did not have a key, but the couple's children let him in, and his wife found him when she came home from work around 5 p.m. She left shortly thereafter to take the middle child to a basketball game; when she returned around 8 p.m., Dobbie and the oldest child were gone, though they returned about forty-five minutes later.

The wife asked Dobbie, who was loud and appeared intoxicated, to leave. He refused and started grabbing and trying to undo the braids in her hair while "rubbing up" against her. She continued to repeatedly tell him to leave, trying not to fight in front of the children. He still refused, saying he was too drunk to drive. The wife was able to secretly call a friend, part of a prearranged signal for this type of situation, and the friend called police.

Meanwhile, Dobbie pulled his wife upstairs to the bedroom and locked the door. He pulled her onto the bed, holding her arms. He took her phone and began scrolling through it. When she protested, he put her in a headlock, which made it difficult for her to breathe. She was able to find her mace and spray Dobbie in the face, but he still grabbed her as she attempted to flee. The altercation spilled into the hallway, briefly involving at least one of the children, then into the bathroom and back downstairs. The police arrived and took Dobbie into custody.

[1] The wife told police that, according to Dobbie's probation agent, a no-contact order was in place. Police dispatchers were unable to verify this information themselves, and the wife had no paperwork to confirm the existence of such an order.

Dobbie was charged with false imprisonment, strangulation or suffocation, and disorderly conduct, all as domestic violence incidents.[2] Pursuant to a plea bargain, Dobbie agreed to plead guilty to false imprisonment. In exchange, the strangulation charge would be dismissed outright, and the disorderly conduct charge would be dismissed and read in. The State would recommend three years' initial confinement and three years' extended supervision, which was the maximum possible sentence, concurrent with any other sentence. Dobbie would be free to argue the sentence length. The circuit court conducted a plea colloquy and accepted Dobbie's guilty plea. Dobbie then waived a presentence investigation report so that he could proceed immediately to sentencing. The circuit court imposed three years' initial confinement and three years' extended supervision.

Counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Dobbie's guilty plea 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 Dobbie's plea was knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12, 20 (1986). The circuit court conducted a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 399, 683 N.W.2d 14, 24. Initially, we note that the colloquy was somewhat incomplete. The circuit court did not discuss the elements of the offense with Dobbie, *see* WIS. STAT. § 971.08(1)(a) (before accepting plea, circuit court must determine defendant understands "nature of the charge" against him), and it

[2] *See* WIS. STAT. § 973.055(1).

did not personally administer the deportation warning, *see* WIS. STAT. § 971.08(1)(c); ***State v. Douangmala***, 2002 WI 62, ¶¶19–21, 253 Wis. 2d 173, 181–182, 646 N.W.2d 1, 5. The circuit court only expressly discussed two constitutional rights that Dobbie was waiving with his plea: the right to a trial and the right to make the State prove its case. *See* ***Hampton***, 2004 WI 107, ¶24, 274 Wis. 2d at 392, 683 N.W.2d at 20. The circuit court also failed to inform Dobbie of the potential penalties he faced, including the maximum imprisonment term and fine, and the mandatory domestic violence surcharge. *See* ***Bangert***, 131 Wis. 2d at 262, 389 N.W.2d at 21.

However, Dobbie completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827–828, 416 N.W.2d 627, 629–630 (Ct. App. 1987). The circuit court confirmed at the outset of the hearing that Dobbie had signed the plea questionnaire, that he understood the questions on it, and that he answered those questions truthfully. *See* ***State v. Hoppe***, 2009 WI 41, ¶30, 317 Wis. 2d 161, 179, 765 N.W.2d 794, 803 (circuit court may use completed plea questionnaire form when discharging plea colloquy duties). The plea form correctly acknowledged the maximum penalties Dobbie faced, specified the constitutional rights he was waiving with his plea, and informed him of potential consequences if he was not a citizen of the United States. Also, attached to the plea questionnaire were the pattern jury instructions for false imprisonment, appropriately modified to track the facts of this case. The circuit court expressly inquired whether Dobbie understood the elements as set out in the instructions, and he confirmed that he did. A circuit court "'may expressly refer to the record or other evidence of defendant's knowledge of the nature of the charge established prior to the plea hearing,'" so the circuit court's inquiry here sufficed. *See* ***State v. Brown***, 2006 WI 100, ¶48, 293 Wis. 2d 594, 622–623, 716 N.W.2d 906, 920 (citation omitted).

Though Dobbie completed the plea questionnaire and the circuit court at least took care to reference it and confirm that Dobbie had gone through it with counsel, we remind the circuit court that it must be careful not to replace a substantive, personal colloquy with the plea form and rote "yes" or "no" answers. *See* ***Hoppe***, 2009 WI 41, ¶¶31–32, 317 Wis. 2d at 179–180, 765 N.W.2d at 803. However, appellate counsel also represents in the no-merit report that she is unable to meritoriously argue that Dobbie did not know or understand any of the information not expressly provided by the circuit court at the plea hearing. *See* ***Bangert***, 131 Wis. 2d at 274, 389 N.W.2d at 26 (defendant wishing to withdraw plea because of defects in colloquy must make *prima facie* showing that circuit court failed to comply with a mandatory duty *and* that defendant "did not know or understand the information which should have been provided at the plea hearing").

Therefore, we conclude that the plea questionnaire and waiver of rights form, the attached jury instructions, and the circuit court's colloquy combined to advise Dobbie of the elements of his offenses and the penalties he faced and to otherwise sufficiently comply with the requirements of ***Bangert*** and ***Hampton*** for ensuring that a plea is knowing, intelligent, and voluntary.[3] There is no arguable merit to a challenge to the plea's validity.

[3] We also note that the circuit court did not explain the nature of read-in offenses to Dobbie, as recommended by ***State v. Straszkowski***, 2008 WI 65, ¶97, 310 Wis. 2d 259, 305–306, 750 N.W.2d 835, 858. However, there is no issue of arguable merit stemming from this, as the circuit court does not appear to have determined the sentence length based on the read-in, nor did it require Dobbie to pay restitution for the read-in offense.

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, 549, 678 N.W.2d 197, 203. 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, 606, 712 N.W.2d 76, 82, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d at 557, 678 N.W.2d at 207. In seeking to fulfill the sentencing objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several subfactors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 851, 720 N.W.2d 695, 699. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d at 606, 712 N.W.2d at 82.

Here, the circuit court's comments were brief but sufficient. It noted that the sentencing objectives primarily boiled down to protecting the public—specifically, Dobbie's wife and children. The circuit court noted that the protection objective was also linked to both rehabilitation, because Dobbie wanted to get sober, and to punishment. The circuit court considered that Dobbie was under the influence of alcohol at the time and, although it is not clear whether it viewed this as a mitigating or aggravating circumstance, either way it was appropriate. The circuit court also commented that no person should have to suffer the physical stress or embarrassment to which Dobbie subjected his wife. The circuit court further noted that under other circumstances, it might not consider a concurrent sentence, as Dobbie's actions were distinct from the actions that led to his other confinement, he was "on paper" at the time of this offense, and he had a "lousy" criminal record. However, it also concluded that the State's

recommendation was reasonable, as were the plea negotiations, and the circuit court felt the recommended sentence fit with Dobbie's expressed desires to improve himself and become a better father. Accordingly, the circuit court imposed the recommended six years' concurrent imprisonment.

The six-year sentence Dobbie received was the maximum allowable. It was, however, within the range authorized by law, and there is no unreasonable or unjustifiable basis for the sentences present in this Record. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 108–109, 622 N.W.2d 449, 456–457. Thus, there is no arguable merit to a challenge to the sentencing court's discretion.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Katie York, Esq., is relieved of further representation of Dobbie in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals