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March 27, 2013

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

2012AP1779-NM

In the interest of Devontae W., a person under the age of 17: State of Wisconsin v. Devontae W. (L.C. # 2011JV1021)

Before Brown, C.J.¹

Devontae W. appeals from a dispositional order adjudicating him delinquent for one count of misdemeanor theft as a party to the crime, contrary to WIS. STAT. §§ 943.20(1)(a) and (3)(a), and 939.05. Upon Devontae's admission to the petition, the circuit court ordered a one-

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

year correctional placement under the supervision of the Department of Corrections. Devontae's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). The no-merit report addresses whether Devontae's admission was knowingly and voluntarily entered, and whether the circuit court properly exercised its discretion at the dispositional hearing. Devontae received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the dispositional order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. WIS. STAT. RULE 809.21.

In September 2011, the State filed a delinquency petition alleging one count of armed robbery as a party to the crime. The charges arose from an incident wherein Devontae along with three other males entered a retail store in the middle of the day during business hours and stole twenty-five coats. One of the males stood by the door and indicated to the store employee that he had a gun. During a traffic stop, police officers located the four males in a car along with the stolen jackets. As part of a plea agreement, the State reduced Devontae's charge to one count of misdemeanor theft, explaining that Devontae was not the individual alleged to have a gun and that it was unclear whether he knew beforehand that his co-conspirator would threaten the employee.

Devontae entered an admission to the amended charge. WISCONSIN STAT. § 938.30(8) requires the circuit court to determine that: (1) Devontae's admission was made voluntarily with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) no threats or promises were made to elicit the admission; and (3) there existed a factual basis for the admission.

At the plea hearing, the circuit court recited and ascertained Devontae's understanding of the elements of theft, and of party to a crime liability. The court confirmed with Devontae that he had reviewed the petition with his attorney and agreed with the facts alleged in the petition. The circuit court informed Devontae that it was not bound by the parties' recommendations or any agreement and could order Devontae placed in a juvenile correctional facility until his eighteenth birthday. Devontae stated that he understood.

The circuit court asked Devontae whether anyone had promised him anything or threatened or coerced him to get him to waive his rights and enter an admission. Devontae answered "[n]o." Devontae confirmed that he was admitting to the crime because he in fact committed it. Additionally, the circuit court drew Devontae's attention to the signed and filed plea questionnaire and ascertained that he had reviewed it with his attorney, understood its contents, and had no questions. *Cf. State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987) (questionnaire is competent evidence of a knowing and voluntary plea in a criminal case). The circuit court specifically verified with Devontae that he had reviewed and understood the constitutional rights portion of the plea questionnaire. The circuit court then read the enumerated constitutional rights to Devontae and asked him whether he wanted "to give those rights up[.]" Devontae answered "[y]es."

Upon questioning by the circuit court, trial counsel stated that she had reviewed the plea questionnaire, elements, potential consequences, and possible defenses with Devontae and believed he understood this information. Based on the parties' stipulation and the facts alleged in the petition, the circuit court determined that a factual basis existed for Devontae's admission. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Devontae's admission.

At the dispositional portion of the hearing, the State and Devontae's juvenile probation officer recommended a correctional placement² pursuant to WIS. STAT. § 938.34(4m). Trial counsel recommended that the court impose and stay a correctional placement in favor of probation and placement in a group home. The circuit court ordered a one-year placement through the Department of Corrections at a juvenile correctional facility.³

Before ordering a correctional placement at disposition, a circuit court must find that the juvenile: (1) has been found delinquent for the commission of an act that would be punishable by a sentence of six months or more if committed by an adult; and (2) is a danger to the public and in need of restrictive custodial treatment. WIS. STAT. § 938.34 (4m). In determining a disposition, "the court is to consider the seriousness of the offense, the need to protect [the community] from juvenile crime, the need to prevent further delinquent acts, and the juvenile's needs for care and treatment." *State v. Richard J.D.*, 2006 WI App 242, ¶13, 297 Wis. 2d 20, 724 N.W.2d 665; *see* WIS. STAT. §§ 938.355(1), 938.01(2) and 938.34. A circuit court's dispositional order is reviewed for an erroneous exercise of discretion. *Richard J.D.*, 297 Wis. 2d 20, ¶5.

At disposition, the circuit court considered the totality of the record, including the petition, court report and psychological assessment as well as the parties' recommendations. The circuit court considered that Devontae had repeated contacts with the juvenile authorities and the court system, and that prior interventions, such as a group home placement, had not

² The court report authored by Devontae's probation officer originally recommended placement in the Serious Juvenile Offender Program (SJO). However, the amended misdemeanor charge rendered Devontae ineligible for the SJO program. *See* WIS. STAT. § 938.34(4h).

prevented further delinquent acts. The circuit court considered Devontae’s history on juvenile probation and noted that he had failed to cooperate with his probation agent, was not going to school, and had committed the present offense while on supervision. The court found that Devontae was a danger to the public and in need of restrictive custodial treatment. The circuit court concluded that given the serious nature of the allegations in the petition, anything less restrictive than a secured correctional placement would not protect the public. In determining disposition, the circuit court examined the relevant facts and applied the proper legal standard. There would be no arguable merit to a challenge to the disposition. *See id.* “The circuit court properly exercises its discretion when it examines the relevant facts, applies the proper legal standard, and uses a rational process to reach a reasonable conclusion.”

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

Upon the foregoing reasons,

IT IS ORDERED that the dispositional order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis J. Weden is relieved from further representing Devontae W. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

³ The circuit court also dismissed any pending sanctions motions in Devontae’s prior cases.