OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

April 23, 2013

To:

Hon. Richard J. Sankovitz
Circuit Court Judge
Safety Building
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Dustin C. Haskell
Assistant State Public Defender
735 N. Water St., Rm. 912
Milwaukee, WI 53203

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Mauricio Antwon Evans 513058
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2012AP2497-CRNM State of Wisconsin v. Mauricio Antwon Evans
(L.C. #2011CF1567)

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

Mauricio Antwon Evans appeals from judgments of conviction, entered upon his guilty pleas, on one count of fleeing or eluding an officer, causing death, and one count of possession of cocaine as a second or subsequent offense. Appellate counsel, Dustin C. Haskell, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2011-12).[1] Evans was advised of his right to file a response, but he has not responded.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On March 31, 2011, police responded to a complaint about drug-dealing going on at a house and in cars parked outside that house. A fully marked squad car, driven by Officer Brian Burch, approached the residence. He noted a gray 1995 Chrysler Concord with three occupants, and parked his squad car in front of that car.[2] As Burch exited his vehicle, he made eye contact with the driver, Evans. Before Burch could reach the back of his own vehicle, he noticed Evans put his hands on the steering wheel and the tires begin to turn. Burch ordered Evans to stop the vehicle, but Evans pulled out and fled. Burch ran back to his vehicle, activated his lights and sirens, and gave chase. At least one other fully marked squad car joined the pursuit. Less than half a mile later, Evans ran a stop sign while going approximately seventy-five miles per hour and collided with another car, severely injuring the driver, C.S. Evans' vehicle stopped when it became embedded in the exterior wall of a nearby church.

When officers approached Evans, he refused to put his hands up and instead engaged in furtive movements. Officers were eventually able to pry a bag containing over twenty grams of marijuana from his hand. Because of damage to the car, the fire department had to force open Evans' door. Evans slumped out with his legs still in the vehicle. From the exposed driver's seat, police recovered a bag containing over five grams of cocaine. Evans was charged with fleeing or eluding causing great bodily harm, possession of cocaine as a second or subsequent

[2] Separate from his investigation of the drug complaint, Burch had noticed that the vehicle had a temporary license plate displayed in the back window. According to Burch, this was a ticketable offense.

offense, possession of tetrahydrocannabinols (THC, the active ingredient in marijuana) as a second or subsequent offense, and felony bail jumping.

C.S. told police that she suffered a broken wrist requiring surgery, a laceration on her leg requiring stitches, a broken leg, and a broken rib.[3] Nine or ten days later, however, C.S. died. The medical examiner reported that she had actually suffered five rib fractures on her right side, in addition to her broken arm and leg. To a reasonable degree of medical certainty, the medical examiner determined the cause of death to be pulmonary thromboemboli due to multiple blunt force trauma injuries.

After C.S.'s death, the State filed an amended complaint, now alleging fleeing and eluding causing death. The cocaine, marijuana, and bail-jumping charges remained. Also included was a new charge of knowingly operating while suspended, causing death: Evans' operating privileges had been suspended for a year, beginning in November 2010, for failure to pay a forfeiture, and a notice had been sent to him on February 11, 2011.

Evans ultimately agreed to resolve the case with a plea agreement. In exchange for his guilty pleas to the fleeing and cocaine charges, the remaining counts would be dismissed and read in. The parties were free to argue the length of sentence. The circuit court accepted Evans' pleas, then sentenced him to eight years' initial confinement and four years' extended supervision for the fleeing charge, and a consecutive nine months' imprisonment for the cocaine charge.

[3] A passenger in Evans' vehicle was also injured, suffering a dislocated right hip and a fracture of the hip socket, requiring surgery.

Counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Evans' guilty pleas 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 Evans' pleas were knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Evans 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 offenses. Jury instructions for both crimes were attached. The form correctly acknowledged the maximum imprisonment terms that Evans faced and the form, along with an addendum, also specified the constitutional rights he was waiving with his plea. *See* ***Bangert***, 131 Wis. 2d at 262.

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, 683 N.W.2d 14. Though the plea questionnaire had not listed the possible fines that Evans faced, the circuit court reviewed those with him. The circuit court directed Evans' attention to the attached jury instructions, inquiring whether he understood the elements of both crimes as listed. Evans confirmed that he did. The circuit court then specifically inquired whether Evans understood that, in connection with the fleeing charge, the State would have had to prove that Evans caused C.S.'s death and that, in connection with the cocaine charge, the State would have had to prove a prior drug conviction. Evans confirmed this understanding as well.

The circuit court referenced the list of constitutional rights provided on the plea questionnaire and asked Evans whether he had reviewed and understood those. Evans answered

affirmatively. The circuit court then specifically asked whether Evans understood, as an example, that he was surrendering the right to make the State prove its case beyond a reasonable doubt. Again, Evans indicated that he understood. The circuit court further confirmed that Evans understood what it meant for certain charges to be dismissed and read in, and it ascertained that Evans had read the amended criminal complaint, admitted the facts in it to be true, and would permit the circuit court to rely on the complaint for a factual basis for the plea.

Though the circuit court frequently referenced the plea questionnaire form, *see* ***Moederndorfer***, 141 Wis. 2d at 827-28, we are satisfied that the circuit court did not use it as a substitute for a substantial, personal colloquy, *see* ***State v. Hoppe***, 2009 WI 41, ¶31, 317 Wis. 2d 161, 765 N.W.2d 794, but, rather, only as a supplement. The plea questionnaire and waiver of rights form, the addendum, and the attached jury instructions, combined with the circuit court's colloquy, appropriately advised Evans of the elements of his offenses, the penalties he faced, and otherwise satisfactorily complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that a plea is knowing, intelligent, and voluntary.[4] There is no arguable merit to a challenge to the plea's validity.

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, 678 N.W.2d 197.

[4] The circuit court did not advise Evans of the potential immigration consequences of his plea. *See* WIS. STAT. § 971.08(1)(c). However, a defendant seeking to withdraw a guilty plea because of a failure by the circuit court to provide this warning must allege "that the plea 'is likely to result in the defendant's deportation, exclusion from admission to this country[,] or denial of naturalization.'" ***State v. Negrete***, 2012 WI 92, ¶26, 343 Wis. 2d 1, 819 N.W.2d 749 (citation omitted; brackets in ***Negrete***). Appellate counsel represents that "[b]ased on a review of the record, and discussions with Mr. Evans, counsel does not believe that this prong can be satisfied for plea withdrawal." Indeed, the record indicates that Evans was born in Chicago. Thus, any failure to provide the deportation warning is harmless, and no issue of arguable merit exists with respect to this omission.

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, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. 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, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23.

The circuit court expressly determined that the primary objective in this case was punishment. This case, it said, "is just a disaster." The traffic accident was not just some freak occurrence on the highway but was the result of Evans pulling away from police because, the circuit court reasoned, he was probably dealing drugs. The circuit court further predicted, based on the area in which this incident occurred, that if C.S. had not been killed, someone else likely would have been. The circuit court did consider various mitigating circumstances, like the fact that Evans had taken responsibility through a plea agreement and the fact that his remorse seemed genuine. However, in light of Evans' history of offenses and disregard for the law—which included not only fleeing from police and running a stop sign, but also multiple instances of skipping court appearances and failure to comply with bail/bond conditions—the circuit court determined that there was a high likelihood that Evans would reoffend. Indeed, when Evans was arrested for this case, he was out on bond in another marijuana-possession case. Based on the totality of the circumstances, then, the circuit court determined that a near-maximum sentence was necessary.

The maximum possible sentence Evans could have received was eighteen and one-half years' imprisonment. The sentence totaling slightly less than thirteen years' imprisonment is well 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). Further, the circuit court relied on no improper factors. Thus, there would be no arguable merit to a challenge to the sentencing court's discretion.[5]

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Evans in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[5] We note that Evans stipulated to the restitution award of approximately $2600. Also, the circuit court properly exercised its discretion when it imposed the DNA surcharge in light of the severity of the offenses. *See* ***State v. Ziller***, 2011 WI App 164, ¶¶10-11, 338 Wis. 2d 151, 807 N.W.2d 241.