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May 1, 2013

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

2012AP1403-CRNM State of Wisconsin v. K.L. Sykes
(L.C. #2011CF2935)

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

K. L. Sykes appeals from a judgment of conviction, entered upon his guilty plea, for felony murder, while attempting to commit armed robbery, as a party to a crime, contrary to WIS. STAT. §§ 940.03, 943.32(2), 939.32, & 939.05 (2011-12).¹ Appellate counsel, Donna Odrzywolski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Sykes did not file a response. After independently reviewing

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

the record and the no-merit report, this court concludes there are no arguably meritorious issues and, therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

As set forth in the complaint, on May 2, 2011, Sykes and another individual, Michael Williams, decided they were going to rob the victim, who was a marijuana dealer.² Sykes agreed to call the victim under the pretext of wanting to buy marijuana. When the victim pulled up in his vehicle, Williams began to talk to him and then shot him.

During the plea hearing, Sykes's attorney clarified that Sykes's plan was to buy marijuana but at some point, while Sykes and Williams were waiting for the victim to arrive, Williams indicated he was going to rob the victim. Instead of leaving the scene, Sykes remained, according to his attorney, "ready, willing and able, as party to a crime, to render assistance, if that was needed."

Pursuant to a plea agreement, Sykes pled guilty to felony murder with an underlying offense of attempted armed robbery. In exchange, the State pointed out Sykes's cooperation and recommended prison time in an unspecified amount. Sykes further agreed to pay reasonable restitution, with the understanding that if anyone else was convicted in connection with the murder, liability for the restitution ordered would be joint and several. The circuit court accepted Sykes's plea, ordered a presentence investigation, and set the matter over for sentencing. The circuit court sentenced Sykes to twenty years of imprisonment comprised of twelve years of initial confinement and eight years of extended supervision.

² At Sykes's sentencing, the district attorney advised the circuit court that despite attempts to gather evidence on Williams, the State had been unable to corroborate Sykes's version of the events that had transpired.

Counsel identifies two potential issues for appeal: whether the circuit court properly accepted Sykes's guilty plea and whether it appropriately exercised its sentencing discretion. We will address each issue in turn.

There is no arguable basis for challenging Sykes's guilty plea. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Sykes completed a plea questionnaire and waiver of rights form and an addendum, *see State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), and the circuit court conducted a thorough plea colloquy addressing Sykes's understanding of the charge against him, the penalties he faced, and the constitutional rights he was waiving by entering a plea, *see* WIS. STAT. § 971.08; *Bangert*, 131 Wis. 2d at 266-72. The circuit court also explicitly told Sykes that he could be sentenced to the maximum time available, and Sykes indicated that he understood. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14.

The plea questionnaire and waiver of rights form, the addendum, and the circuit court's colloquy appropriately advised Sykes of the elements of his offense and the potential penalties he faced, and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that a plea is knowing, intelligent and voluntary. There would be no arguable merit to a challenge to the plea's validity and the record discloses no other basis to seek plea withdrawal.³

³ Setting aside, for the moment, the guilty plea waiver rule, *see State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (observing general rule that a guilty plea waives all nonjurisdictional defects, including constitutional claims), we note that Sykes was sixteen on May 2, 2011, the date he committed the crime in this matter. He turned seventeen on June 9, 2011, and the complaint against him was filed on June 25, 2011. This court contemplated whether an argument could be made that the State intentionally delayed charging Sykes to avoid juvenile jurisdiction, which would amount to a due process violation. *See State v. Velez*, 224 Wis. 2d 1, 14-15, 589 N.W.2d 9 (1999) (There is a significant due process right not to be deprived of juvenile jurisdiction through deliberate State manipulation designed to

(continued)

The second 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. The primary objectives of a sentence include protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. A sentencing court should identify the objectives of greatest importance and explain how a particular sentence advances those objectives. *Id.* The necessary amount of explanation ““will vary from case to case.”” *State v. Brown*, 2006 WI 131, ¶39, 298 Wis. 2d 37, 725 N.W.2d 262 (citation omitted).

In seeking to fulfill the sentencing objectives, the 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 it 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 court’s discretion. See *Gallion*, 270 Wis. 2d 535, ¶41.

In sentencing Sykes, the circuit court commented on Sykes’s culpability, noting that even if Sykes did not pull the trigger, he was, in a way, the ringleader insofar as he was responsible for bringing the victim to the scene for a drug deal. The circuit court took into account Sykes’s poor upbringing and his cooperation with police. However, it also noted his moderate to poor criminal record, which included being found delinquent for possession of a firearm and for

avoid juvenile jurisdiction.). We conclude there is no support for such a claim in the record before us. See *State v. Aderhold*, 91 Wis. 2d 306, 314, 284 N.W.2d 108 (Ct. App. 1979) (“The rule is well established that reviewing courts are limited to the record, and are bound by the record.”).

possession with intent to deliver cocaine. Regarding the gravity of the offense, the circuit court stated, “scale [of] one to 10, 10 being the worst, this is either a 9 or 10.”

With the goals of punishing Sykes and deterring others in the community, the circuit court sentenced him to twelve years of initial confinement and eight years of extended supervision. The record demonstrates that the circuit court followed the dictates of *Gallion* at the sentencing hearing. Further, the circuit court’s sentence, which fell 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, was not so excessive that it shocks the public’s sentiment, see *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). For these reasons, there would be no arguable merit to a challenge to the circuit court’s sentencing 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 of conviction is summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Donna Odrzywolski is relieved of further representation of K. L. Sykes in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals