



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

June 5, 2013

To:

Hon. David A. Hansher
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

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

John Barrett, Clerk
Milwaukee County Courthouse
821 W. State Street, Room 114
Milwaukee, WI 53233

Kevin Wade Hobbs 128355
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Angela Conrad Kachelski
Kachelski Law Office
7101 N. Green Bay Avenue, Suite 6A
Milwaukee, WI 53209

Dan Barlich
Wisconsin Children's Court Center
10201 W. Watertown Plank Road
Wauwatosa, WI 53226-3532

Karen A. Loebel
Asst. District Attorney
Milwaukee County Courthouse
821 W. State Street
Milwaukee, WI 53233

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

2012AP2227-CRNM State of Wisconsin v. Kevin Wade Hobbs
(L.C. #2011CF2373)

Before Fine, Kessler and Brennan, JJ.

Kevin Wade Hobbs appeals from a judgment of conviction, entered on his guilty plea, for one count of second-degree reckless injury, contrary to WIS. STAT. § 940.23(2)(a) (2011-

12).¹ Hobbs's postconviction/appellate counsel, Angela C. Kachelski, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Hobbs has not responded. We have independently reviewed the record and the no-merit report as mandated by *Anders*, and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

The complaint alleged that while Hobbs was intoxicated, he broke down the bedroom door of a fellow resident at a rooming house and stabbed the resident in the neck with a butter knife, causing serious damage to the victim's throat that required surgery and forty stitches to repair. The complaint also commented on the victim, noting that eight years earlier, he "suffered extremely severe burn injuries, and partial loss of and disability to both hands, that would make it extremely difficult for him to wield a weapon or to physically defend himself from an attack."

Hobbs was arrested at the crime scene after fighting with police officers. He told the police that the victim had eaten Hobbs's food and "had gotten the better of him in a fistfight." Hobbs was charged with second-degree reckless injury with the penalty enhancer for using a dangerous weapon, which increased his maximum exposure by five years. *See* WIS. STAT. § 939.63(1)(b).

¹ The judgment of conviction contains a scrivener's error. Specifically, the judgment of conviction references WIS. STAT. § 939.63(1)(b), which provides for an increased penalty where a person possesses, uses, or threatens to use a dangerous weapon while committing a felony for which "the maximum term of imprisonment ... is more than 5 years or is a life term." Although the criminal complaint and information originally included this penalty enhancer, the penalty enhancer was dismissed on the State's motion pursuant to the plea agreement. Upon remittitur, the trial court shall direct the clerk of circuit court to issue an amended judgment of conviction that removes the reference to § 939.63(1)(b).

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

Hobbs entered a plea agreement with the State pursuant to which he agreed to plead guilty to second-degree reckless injury and the State agreed to drop the penalty enhancer. Both sides were free to argue for an appropriate sentence. The trial court dismissed the penalty enhancer, accepted the guilty plea, and found Hobbs guilty.

At sentencing, the trial court imposed the maximum sentence of seven-and-one-half years of initial confinement and five years of extended supervision. The trial court waived the DNA surcharge.

The no-merit report considered two issues: (1) whether the plea was knowingly, intelligently, and voluntarily entered; and (2) whether the trial court erroneously exercised its sentencing discretion. This court agrees with appellate counsel's description and analysis of the potential issues identified in the no-merit report and independently concludes that pursuing them would lack arguable merit. In addition to agreeing with appellate counsel's description and analysis, we will briefly discuss the plea and sentence.

We begin with Hobbs's guilty plea. There is no arguable basis to allege that Hobbs's plea was not knowingly, intelligently, and voluntarily entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). He completed a plea questionnaire and waiver of rights form, *see State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), and the trial court conducted a thorough plea colloquy addressing Hobbs's understanding of the plea agreement and the charge to which he was pleading guilty, the penalties he faced, and the

constitutional rights he was waiving by entering his plea,² *see* WIS. STAT. § 971.08; *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14; *Bangert*, 131 Wis. 2d at 266-72. The trial court confirmed with trial counsel that he explained the elements of the crime to Hobbs, and trial counsel also indicated that the jury instructions listing the elements of the crime were attached to the plea questionnaire. The trial court told Hobbs that it was not bound by the parties' recommendations.

Both the State and trial counsel indicated that they would stipulate that the facts in the criminal complaint served as a basis for the plea. The trial court confirmed with Hobbs that he understood he was giving up defenses such as alibi, intoxication, self-defense, and insanity. The plea questionnaire, waiver of rights form, Hobbs's discussion with his trial counsel, and the trial court's colloquy appropriately advised Hobbs of the elements of the crime and the potential penalties he faced, and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that the plea was knowing, intelligent, and voluntary. There would be no arguable

² This court notes that the trial court neglected to comply with the procedural mandate of WIS. STAT. § 971.08(1)(c), which requires the court, before accepting a guilty plea, to:

Address the defendant personally and advise the defendant as follows:
 “If you are not a citizen of the United States of America, you are advised that a plea of guilty or no contest for the offense with which you are charged may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law.”

See id.; *see also State v. Douangmala*, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1 (explaining that § 971.08(1)(c) “not only commands what the court must personally say to the defendant, but the language is bracketed by quotation marks, an unusual and significant legislative signal that the statute should be followed to the letter”) (citation omitted). To be entitled to plea withdrawal based on the trial court's failure to personally read the language of § 971.08(1)(c) during the plea, Hobbs would have to show “that the plea is likely to result in [his] deportation, exclusion from admission to this country or denial of naturalization.” *See* § 971.08(2). There is no indication in the record that Hobbs can make such a showing.

merit to a challenge to the validity of the plea, and the record discloses no other basis to seek plea withdrawal.

Next, we conclude that there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, *see State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

At sentencing, the trial 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 it must determine which objective or objectives are of greatest importance, *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the trial 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. *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 trial court's discretion. *See Gallion*, 270 Wis. 2d 535, ¶41.

In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. First, the trial court discussed the crime, noting that the knife blade had come close to the victim's artery and "almost killed him." The trial court called Hobbs's actions an "unprovoked attack" on a defenseless man and said the offense was "as serious [as] you can get." The trial court also said that it believed that the State's dismissal of the penalty enhancer was "a tremendous break for the defendant" that reduced his exposure.

The trial court gave Hobbs credit for accepting responsibility, but also commented on Hobbs's extensive criminal record, which included forty-eight contacts with law enforcement and thirteen incarcerations. The trial court recognized that Hobbs has mental health issues and said that Hobbs "needs serious supervision." The trial court said that the risk assessment on Hobbs was "one of the worst" the trial court had seen. The trial court concluded that Hobbs "has to be watched closely by the mental health individuals both in prison and when he's released." It said that it wanted to deter Hobbs "from doing this again" and recognized the need to protect the public. The trial court concluded: "Taking everything together, because I have to look at the whole picture, and the egregiousness not only of the attack but of his long criminal history, I think nothing less than the maximum is called for in this case."

With respect to the severity of the sentence, we note that by entering the plea agreement, Hobbs benefitted from the dismissal of the penalty enhancer, which lowered his exposure by five years. Although the trial court imposed the maximum sentence, there would be no merit to arguing that the sentence was excessive. *See Ocanas*, 70 Wis. 2d at 185. Given the severity of the crime, the dismissed penalty enhancer, and Hobbs's extensive criminal history, imposition of the maximum sentence in this case does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See id.* For these reasons, there would be no arguable merit to a challenge to the trial court's sentencing discretion and the severity of the sentence.

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

Upon the foregoing, therefore,

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

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

Diane M. Fremgen
Clerk of Court of Appeals