



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 11, 2013

To:

Hon. Ellen R. Brostrom
Circuit Court Judge, Br. 6
821 W State St
Milwaukee, WI 53233

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

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

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

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

Jameel Alheyemi Darrah 541380
Wisconsin Secure Program Facility
P.O. Box 9900
Boscobel, WI 53805-9900

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

2012AP2373-CRNM State of Wisconsin v. Jameel Alheyemi Darrah (L.C. #2011CF3418)

Before Brennan, J.¹

Jameel Alheyemi Darrah appeals a judgment convicting him of misdemeanor battery as an act of domestic abuse. The circuit court imposed a nine-month jail sentence and made it consecutive to the term of reconfinement that Darrah was serving for armed robbery. Appellate counsel, Attorney Dustin C. Haskell, filed and served a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32(1). Darrah did not respond. After

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

an independent review of the record as mandated by *Anders*, this court concludes that further proceedings would lack arguable merit.

According to the criminal complaint, Iriale R. Joplin told police that Darrah, who she described as her “ex-live-in boyfriend,” grabbed her by her hair and slammed her to the pavement. As a result of this incident, the State charged Darrah with misdemeanor battery as a repeat offender and as an act of domestic abuse.

We first consider whether Darrah could bring a meritorious challenge to the validity of his guilty plea. At the outset of the plea hearing, the parties described the terms of the plea bargain, which resolved both the proceeding underlying this appeal, Milwaukee County case No. 2011CF3418, and a second set of charges filed in Milwaukee County case No. 2011CF4864.² Darrah’s trial counsel explained that, in the instant case, Darrah would plead guilty to the battery charge “with the repeater struck,” and the State would move to dismiss two felony charges alleged in the complaint. Additionally, Darrah would plead guilty in case No. 2011CF4864 to one misdemeanor count of violating a restraining order and one felony count of intimidating witnesses. The State agreed to make a global recommendation of three years of initial confinement and two years of extended supervision and to take no position on whether the aggregate disposition should be concurrent with or consecutive to his pending reconfinement for an earlier armed robbery conviction. Darrah said that he understood the terms of the plea bargain.

² Darrah voluntarily dismissed his appeal from the judgment of conviction in Milwaukee County case No. 2011CF4864, and that matter is not before this court.

The circuit court reviewed the battery charge with Darrah on the record, described the elements of the offense, and stated the maximum penalties for the crime. Darrah said that he understood the elements of the crime and the penalties that he faced. The circuit court explained that it was not bound by the parties' sentencing recommendations, that it was free to impose a maximum sentence for the battery, and that the maximum sentence could be consecutive to "any other sentence that [Darrah] might be serving." Darrah said that he understood.

The record contains a signed guilty plea questionnaire with a signed addendum. The questionnaire reflects that Darrah understood the charge he faced, the rights he waived by pleading guilty, and the penalties that the circuit court could impose. The addendum reflects Darrah's acknowledgment that by pleading guilty he would give up his rights to raise defenses, to challenge the validity of his arrest, and to seek suppression of evidence. Darrah and his trial counsel confirmed that they reviewed and signed the forms together.

The circuit court told Darrah that by pleading guilty he would give up the constitutional rights listed on the guilty plea questionnaire, and the circuit court reviewed each right. Darrah said that he understood. Darrah told the circuit court that he had not been promised anything outside of the plea bargain to induce his guilty plea and that he had not been threatened.

A guilty plea colloquy must include an inquiry sufficient to satisfy the circuit court that the defendant committed the crime charged. *See* WIS. STAT. § 971.08(1)(b). Here, Darrah admitted that the criminal complaint accurately stated the facts underlying the battery charge. He also told the circuit court that he pled guilty to the charge of "misdemeanor battery, domestic abuse," and he assured the circuit court: "I am pleading because I know that I am guilty." Additionally, Darrah's trial counsel told the circuit court that it could rely on the facts alleged in

the criminal complaint. The circuit court found a factual basis for the guilty plea. See *State v. Black*, 2001 WI 31, ¶13, 242 Wis. 2d 126, 624 N.W.2d 363.

The record reflects that Darrah entered his guilty plea knowingly, intelligently, and voluntarily. See WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); see also *State v. Hoppe*, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The record reflects no basis for an arguably meritorious challenge to the validity of the plea.

We next consider whether Darrah could pursue an arguably meritorious challenge to the sentence. Sentencing lies within the circuit court's discretion, and our review is limited to determining if discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. The circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentencing court must also "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *Gallion*, 270 Wis. 2d 535, ¶40.

The record here reflects an appropriate exercise of sentencing discretion. The circuit court determined that the crime was less serious than some offenses but serious nonetheless.

Recognizing that Darrah was twenty-two years old at the time of sentencing, the circuit court characterized him as immature and noted with concern that he had difficulty controlling his anger, that he acted impulsively, and that he took too many risks. The circuit court observed that even the presentence report submitted by the defense discussed Darrah's impulsive behavior and low tolerance for frustration. Turning to the risk to the public, the circuit court found that Darrah had "criminal associates" and "an absence of pro[-]social activities," all of which increased his risk to reoffend.

The circuit court noted several mitigating factors. It took into account the substantial losses that Darrah had experienced in his life, acknowledging that his father died when Darrah was only six years old, that his mother suffered from mental illness, and that he grew up in difficult circumstances. The circuit court also took particular note of his intelligence and praised him for his ability to be "respectful and proper" when he chose.

The circuit court identified protection of the community as the primary sentencing goal, explaining that confinement was necessary in light of the impulsiveness and immaturity that Darrah displayed and his accompanying dangerousness and risk to reoffend. The circuit court therefore imposed a nine-month jail sentence and ordered Darrah to serve the sentence consecutively to any other sentence.

The circuit court identified the factors that it considered when sentencing Darrah. The factors are proper and relevant, and the circuit court applied them in a reasoned manner to further the primary sentencing objective. Moreover, the sentence imposed was not unduly harsh. A sentence is unduly harsh "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment

of reasonable people concerning what is right and proper under the circumstances.” See *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). The sentence imposed here did not exceed the maximum sentence of nine months in jail and a \$10,000 fine. See WIS. STAT. §§ 940.19 (1); 939.51(3)(a). A sentence within the maximum sentence permitted by statute is presumptively not unduly harsh. See *Grindemann*, 255 Wis. 2d 632, ¶32. We cannot say that the sentence imposed in this case is disproportionate or shocking. See *State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983). Further proceedings to challenge the sentence would lack arguable merit.

Based on an independent review of the record, we conclude that no other potential issues warrant discussion. Any further proceedings would be without arguable merit within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of any further representation of Jameel Alheyemi Darrah on appeal in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals