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June 27, 2013

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

2012AP696-CRNM State v. Voneric Orlando Steward (L.C. #2009CF4259)

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

Voneric Orlando Steward appeals from a judgment of conviction, entered upon his guilty plea, on one count of felony murder, with the underlying crime of armed robbery as a party to a crime. *See* WIS. STAT. §§ 940.03, 943.32(2), & 939.05 (2009-10).¹ Steward also appeals from an order denying his motion for postconviction relief.² Appellate counsel, Raj Kumar Singh, has

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

² The Honorable Jeffrey A. Conen presided over the plea proceedings, entered the judgment of conviction, and issued the preliminary order denying Steward's postconviction motion for sentence credit. The Honorable David L. Borowski presided over the evidentiary hearing related to Steward's remaining postconviction claims and entered the order denying Steward's motion.

filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Despite receiving numerous extensions to do so, Steward did not respond. After independently reviewing the record and the no-merit report as mandated by *Anders*, this court concludes that further proceedings would lack arguable merit. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Steward was charged with one count of felony murder. As set forth in the criminal complaint, the charge stemmed from an incident that occurred on May 26, 2009. On that date, a witness told police that Steward and a co-actor, both armed with guns, entered the lower unit of a duplex and proceeded to rob some of the individuals inside. While the robberies were underway, Steward's co-actor shot a man. Steward and his co-actor were arrested in September of 2009.

In exchange for Steward's guilty plea, the State agreed to cap its sentence recommendation at twenty years' initial confinement and ten years' extended supervision, with the sentence to run concurrently with a sentence that Steward was serving at the time. Steward would be free to argue otherwise. The circuit court ultimately sentenced Steward to eighteen years' initial confinement and ten years' extended supervision.

Following his conviction, Steward filed a postconviction motion seeking sentence credit and plea withdrawal. The circuit court denied outright Steward's request for forty-seven days of sentence credit, explaining that Steward had already received the credit toward his reconfinement term in an unrelated case and that he was not entitled to dual credit because the sentence in the instant case was consecutive. The circuit court did, however, schedule an evidentiary hearing to address Steward's claims that his guilty plea was not knowingly, voluntarily, and intelligently entered and that he received ineffective assistance from his trial counsel. During the hearing,

Steward and his trial counsel testified. The circuit court denied Steward's motion, and he now appeals.

We first independently consider whether there is any basis for a challenge of Steward's guilty plea. See *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Steward 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 Steward's understanding of the charges against him, the penalties he faced, and the constitutional rights he was waiving by entering pleas, 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 circuit court also told Steward that it was not bound by the parties' recommendations and could sentence Steward to the maximum time available to run consecutive to any sentence Steward was serving.

We note that the circuit court failed 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 *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). Here, the circuit court stated: "Do

you understand if you are not a citizen, your plea could result in deportation?” Steward responded affirmatively. To be entitled to plea withdrawal on this basis, Steward 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 Steward can make such a showing.

We conclude that 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.

We have also considered whether the circuit court erroneously exercised its sentence discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, the 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 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 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 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 circuit court’s discretion. *See Gallion*, 270 Wis. 2d 535, ¶41.

In this case, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. The circuit court noted that Steward was not an innocent bystander, who was just hanging around; instead, he was actively involved in the underlying armed robbery. The circuit court reflected on

Steward's attempt to minimize his involvement and his possession of a firearm, despite having a prior conviction that prohibited such possession.

The circuit court gave Steward credit for entering a plea and took into account that Steward did not fire the fatal shot. However, the circuit court concluded that “[t]he public needs to know that if you put yourself in a position such as this and somebody dies, that there are significant and serious consequences.”

The circuit court's sentencing remarks reveal no erroneous exercise of discretion. The sentence imposed 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). Steward was ordered to serve eighteen years of initial confinement, which was two years less than what the State recommended. In addition, Steward was jointly and severally responsible for paying restitution to the victim's father and the Wisconsin Department of Health and Human Services. Given the seriousness of the crimes, we cannot say that the sentence would “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 severity of the sentence.

Finally, we agree with counsel's conclusion that there is no “non-frivolous” way to challenge the circuit court's ruling on issues Steward raised in his postconviction motion.³ At

³ During the postconviction evidentiary hearing, we note that Steward told the circuit court he had not yet obtained his GED at the time of the plea hearing. His plea hearing was held on January 15, 2010, and during the evidentiary hearing, Steward told the circuit court that he received his GED at the end of January 2010. The plea questionnaire, however, indicates that Steward had received his GED as of January 15, 2010. This slight inconsistency does not lead us to conclude that Steward's plea was invalid.

one point during the postconviction hearing, the circuit court went so far as to say, “This defendant is lying through his teeth about everything that he said to me today, everything.” To the extent that the outcome hinged on the circuit court’s credibility determinations, the record reveals no reason for this court to interfere. *See State v. Thiel*, 2003 WI 111, ¶23, 264 Wis. 2d 571, 665 N.W.2d 305 (This court “must be sensitive” to the circuit court’s assessment of credibility, and we will uphold that factual determination unless clearly erroneous.). And, there would be no arguable merit to a challenge to the remainder of the circuit court’s rulings.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Raj Kumar Singh is relieved of further representation of Steward in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals