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August 4, 2015

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

2015AP2-CRNM State of Wisconsin v. Eric Lamar Gorins (L.C. #2014CF2124)

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

Eric Lamar Gorins pled guilty to one count of attempted theft from a person as a party to a crime. The circuit court imposed and stayed a one-year jail sentence and placed Gorins on probation for two years with the condition that he spend six months in the House of Correction. The circuit court further ordered expungement of Gorins's criminal record upon successful completion of probation.

Appellate counsel, Attorney Timothy L. Baldwin, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2013-14).[1] Gorins did not file a response. Upon our review of the no-merit report and the record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Gorins and a companion approached Q.R. late in the evening of May 14, 2014, as Q.R. was walking on a public street in Milwaukee, Wisconsin. Gorins asked to use Q.R.'s telephone. When Q.R. refused, Gorins demanded "all [Q.R.'s] stuff." Q.R. was able to flag down a passing police car and describe to the officer how two men had just tried to rob him. Q.R. then pointed to two pedestrians and told the officer that they were the robbers. The officer stopped the men and identified them as Gorins and Moshe Wilson, both of whom subsequently made incriminating statements. Gorins told police that he was angry when Q.R. would not give up his cell phone in response to Gorins's request. Gorins admitted that he "said something" to Q.R., but Gorins claimed he could not remember what he said because he was drunk. Wilson, however, recalled that Gorins told the intended victim to give everything he had to Gorins.

[1] The Wisconsin rules of appellate procedure, particularly WIS. STAT. RULE 809.32 (2013-14), govern the instant proceeding, but the no-merit report includes a "disclosure statement" that reflects counsel's reliance on certain federal procedural rules. Those federal procedural rules are not applicable to this appeal in Wisconsin state court. All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The State charged Gorins with attempted theft of movable property from a person as a party to a crime. *See* WIS. STAT. §§ 943.20(1)(a) & (3)(e), 939.05(1), 939.32. Gorins quickly decided to resolve the charge against him with a plea bargain.

We first consider whether Gorins could pursue an arguably meritorious challenge to his guilty plea. At the start of the plea proceeding, the State described the terms of the parties' plea bargain. The State explained that Gorins would plead guilty as charged, and the State would recommend a twelve-month jail sentence imposed and stayed in favor of two years of probation. The State would further recommend time in jail as a condition of probation without specifying the length of the condition time, and the State would not object to Gorins's release to the Milwaukee County Day Reporting Center while serving his condition time. Gorins and his trial counsel confirmed that the State correctly described the terms of the plea bargain.

The circuit court explained to Gorins that he faced a five-year term of imprisonment and a $12,500 fine upon conviction of the charge against him. *See* WIS. STAT. §§ 943.20(1)(a) & (3)(e), 939.32(1g), 939.50(3)(g). The circuit court told Gorins that it could impose the maximum statutory penalties if it chose to do so and that it was not bound by the terms of the plea bargain or by any sentencing recommendations. Gorins said he understood.

The circuit court warned Gorins that, if he was not a citizen of the United States, his guilty plea exposed him to the risk of deportation or exclusion from admission to this country. *See* WIS. STAT. § 971.08(1)(c). Gorins said he understood. Although the circuit court did not caution Gorins about the risks described in § 971.08(1)(c) using the precise words required by

the statute, minor deviations from the statutory language do not undermine the validity of a plea.[2] *See* ***State v. Mursal***, 2013 WI App 125, ¶20, 351 Wis. 2d 180, 839 N.W.2d 173.

The record contains a signed guilty plea questionnaire and waiver of rights form with attachments. Gorins confirmed that he reviewed the form and attachments with his trial counsel and that he understood them. The plea questionnaire reflects that Gorins was twenty years old and had completed the ninth grade. The questionnaire further reflects that Gorins understood the charge he faced, the rights he waived by pleading guilty, and the penalties that the circuit court could impose, and that he had not been threatened or promised anything outside of the terms of the plea bargain to induce his guilty plea. A signed addendum reflects Gorins'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 his statements and other evidence.

The circuit court told Gorins that by pleading guilty he would give up the constitutional rights listed on the guilty plea questionnaire, and the circuit court reviewed those rights on the record. Gorins said that he understood. The circuit court explained that by pleading guilty Gorins would give up his potential defenses to the charge, his potential challenges to the actions of the police, and the opportunity to seek suppression of the evidence against him. Gorins said he understood.

[2] We observe that, before a defendant may seek plea withdrawal based on failure to comply with WIS. STAT. § 971.08(1)(c), the defendant must 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). Nothing in the record suggests that Gorins could make such a showing.

The jury instructions describing the elements of the offense are attached to the guilty plea questionnaire and waiver of rights form. Gorins told the circuit court that he had discussed the elements of the offense with his trial counsel and that he understood them. The circuit court then reviewed the elements with Gorins and explained how they applied to the charge he faced. Gorins said he understood.

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). Gorins and his trial counsel both told the circuit court that it could rely on the facts alleged in the criminal complaint. The circuit court properly 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 Gorins 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).[3] The record reflects no basis for an arguably meritorious challenge to the validity of the plea.

We next consider whether Gorins could pursue an arguably meritorious challenge to his sentence. Sentencing lies within the circuit court's discretion, and our review is limited to

[3] In the no-merit report, appellate counsel suggests that this court assesses the validity of a defendant's guilty plea in light of federal Seventh Circuit cases. The suggestion is puzzling. Guilty pleas in this state are governed by WIS. STAT. § 971.08. When the defendant has resolved a criminal charge with a guilty or no-contest plea, we ordinarily expect appellate counsel filing a no-merit report to examine the plea in light of § 971.08, and in light of controlling Wisconsin case law regarding plea proceedings, particularly ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), and its progeny.

determining if the circuit court erroneously exercised its discretion. ***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 "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. In seeking to fulfill the sentencing objectives, 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 circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See* ***id.*** The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. ***Stenzel***, 276 Wis. 2d 224, ¶16.

The record here reflects an appropriate exercise of sentencing discretion. The circuit court identified deterrence, community safety, and rehabilitation as the primary sentencing goals, and the circuit court discussed the factors that it deemed relevant to those goals. The circuit court considered the gravity of the offense, observing that Gorins frightened Q.R. and emphasizing that the actions Gorins took were wrong, even though he did not ultimately steal anything. The circuit court considered Gorins's character, acknowledging his stated ambition to complete his high school education and own a business or work in law enforcement. The circuit court also took into account the information Gorins's trial counsel provided about Gorins's background, including his mother's history of addiction and her eventual termination of parental rights to Gorins's four siblings, the lack of stability in his upbringing as he was shuffled from one relative to another, and his father's absence

from Gorins's life. The circuit court considered the safety of the community, observing that Gorins must address his needs for treatment and education or risk committing additional crimes.

The circuit court properly considered probation as the first sentencing alternative, *see* ***Gallion***, 270 Wis. 2d 535, ¶25, and the circuit court agreed with Gorins that probation was appropriate. Although the circuit court also concluded that Gorins must serve six months in the House of Correction as a condition of his probation, the circuit court allowed him to be released to the Day Reporting Center during the six-month period, explaining that the Day Reporting Center offers "the best type of programming we can give you."

The circuit court also considered and granted Gorins's request for expungement upon successful completion of probation. *See* WIS. STAT. § 973.015 (permitting sentencing court to order expungement of criminal record upon successful completion of a sentence if the offender was under twenty-five years old at the time of committing the crime for which he or she is being sentenced). In light of Gorins's efforts at self-improvement during the two months he spent in presentence custody, the circuit court found he had "the ability to do the right thing" and deserved credit for the efforts he had made.[4] The circuit court explained that Gorins would have the "opportunity ... to get [his] life put together" and "not ... have this baggage hanging on" him. The circuit court reminded Gorins, however, that it was up to him to capitalize on the opportunity that the possibility of expungement afforded him.

[4] The record reflects that Gorins presented the circuit court with certificates he earned while in custody. Neither Gorins nor the circuit court described the specific accomplishments memorialized in the certificates, and the circuit court returned them to Gorins at the conclusion of the sentencing hearing.

The circuit court identified the factors that it considered in choosing an appropriate sentence in this matter. The factors are proper and relevant. Moreover, the sentence is 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). Here, the penalties imposed are far less than the law allows. "'[A] sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***Id.*** (citation omitted). Accordingly, the sentence is not unduly harsh or excessive. We conclude that a challenge to the circuit court's exercise of sentencing discretion would lack arguable merit.

We have also considered whether Gorins could mount an arguably meritorious challenge to the $250 deoxyribonucleic acid surcharge imposed here pursuant to WIS. STAT. § 973.046(1r)(a). The surcharge is required for those sentenced after January 1, 2014, the effective date of § 973.046(1r)(a). *See* ***State v. Radaj***, 2015 WI App 50, ¶¶4-5, ___ Wis. 2d ___, ___ N.W.2d ___; *see also* 2013 Wis. Act 20, §§ 2355, 9426(1)(am). In ***Radaj***, we concluded that mandatory surcharges under § 973.046(1r)(a) may constitute unconstitutional *ex post facto* punishment if imposed after January 1, 2014, for crimes committed before that date. *See* ***Radaj***, 2015 WI App 50, ¶¶1, 4-5 (discussing multiple mandatory DNA surcharges imposed under § 973.046(1r)(a) for crimes committed before its effective date). ***Radaj***, however, does not provide any basis for Gorins to mount an arguably meritorious claim for relief from the DNA

surcharge because he committed the crime at issue here more than five months after January 1, 2014.

Based on our independent review of the record, no other issues warrant discussion.[5] We conclude that any further proceedings would be wholly frivolous 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 Timothy L. Baldwin is relieved of any further representation of Eric Lamar Gorins on appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[5] Appellate counsel advises that he is unaware of any basis for challenging the effectiveness of Gorins's trial attorney. Our independent review of the record similarly reveals no arguably meritorious basis for such a challenge.