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November 20, 2015

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

2015AP443-CRNM State of Wisconsin v. Anthony Carrington Hooks
(L.C. # 2011CF4053)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Anthony Carrington Hooks appeals a judgment convicting him of three counts of robbery of a financial institution. He also appeals the order denying his motion for postconviction relief.[1] Appellate counsel, Dianne M. Erickson, has filed a no-merit report under WIS. STAT. RULE

[1] Sentence was imposed by the Honorable Charles F. Kahn; the postconviction motion was denied by the Honorable M. Joseph Donald.

809.32 (2013-14)[2] and ***Anders v. California***, 386 U.S. 738 (1967). Hooks filed a response and Attorney Erickson filed a supplemental no-merit report. *See* WIS. STAT. RULE 809.32(1)(e) and (f). The no-merit report addresses the validity of the plea and sentence and the imposition of the DNA surcharge. This court has reviewed the record, counsel's reports, and the response. We conclude that there are no arguably meritorious appellate issues.

Pursuant to a plea agreement, Hooks pled guilty to three counts of robbery of a financial institution. *See* WIS. STAT. § 943.87 (2009-10). As part of the plea agreement, two other counts of the same crime were dismissed and read in at sentencing. The court sentenced Hooks to fourteen years of initial confinement and ten years of extended supervision on each count, to be served concurrently. A postconviction motion for resentencing was denied.

A meritorious challenge to the validity of the guilty plea could not be raised. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991).

Hooks was charged with five counts of bank robbery, all committed during a four-month period in 2011. At the outset of the plea colloquy, Hooks' attorney recounted the plea agreement—Hooks would plead guilty to the crimes committed on April 25, June 11, and

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

August 28, 2011, and the crimes committed on May 13 and August 6, 2011, would be dismissed and read in. Both parties would be free to argue at sentencing. The court explained the factual allegations underlying the crimes and informed Hooks of the maximum sentence that could be imposed. Hooks told the court that he understood.

A signed plea questionnaire is in the record. The court ascertained that Hooks had read the questionnaire before signing it and that he understood its contents. Hooks told the court that he understood the constitutional rights listed on the form. The court explained that, if Hooks did not plead guilty, the State would have to establish guilt of each element of the crime beyond a reasonable doubt to a twelve-person jury. Hooks said he understood. Hooks told the court that he was satisfied with his attorney's representation and that he understood he was giving up his right to challenge how the State had gathered its evidence. The court then asked Hooks how he pled to each crime, identifying each by the bank robbed and date committed. Hooks pled guilty to each count.[3]

When the court asked if any threats or promises had been made, Hooks told the court that a detective had said he would get probation if he admitted guilt. The court discussed that question at length, telling Hooks that it was very unlikely that he would receive probation and giving Hooks the opportunity to discuss the matter further with his attorney. After a short conference with his attorney, Hooks confirmed that no promises had been made and that he still

[3] In his response, Hooks contends that he was in custody on August 25, 2011, so he could not have committed the August 28 robbery. Hooks relies on a Department of Corrections document that appears to suggest an August 25, 2025 date for the completion of Hooks' sentence. We agree with the assessment made by Attorney Erickson in the supplemental no-merit response—the computation of a release date by DOC does not defeat Hooks' repeated admissions during the colloquy that he committed the bank robbery on August 28, 2011.

wanted to plead guilty. Hooks' attorney told the court that he believed Hooks understood his constitutional rights and was entering his guilty plea freely and voluntarily. Counsel agreed that the facts in the criminal complaint constituted an adequate factual basis for the plea.

The plea colloquy shows that the court complied with the requirements of WIS. STAT. § 971.08 and ***Bangert***. Therefore, a postconviction challenge to the validity of the plea would lack arguable merit.

We next consider whether an appellate challenge to the sentence would have arguable merit. On appeal, this court's review of sentencing 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 discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion." ***Id.*** When the exercise of discretion has been demonstrated, we follow "'a consistent and strong policy against interference with the discretion of the trial court in passing sentence.'" ***Id.***, ¶18 (quoted source omitted). "'[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.'" ***Id.*** (quoted source omitted). The "'sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.'" ***Id.***, ¶23 (quoted source omitted).

"Circuit courts are required to 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." ***Id.***, ¶40. Also, under truth-

in-sentencing, the legislature has mandated that the court shall consider the protection of the public, the gravity of the offense, the rehabilitative needs of the defendant, and other aggravating or mitigating factors. ***Id.***, ¶40 n.10.

In this case, the court addressed Hooks' character at length, identifying several positive factors, including Hooks' employment history, cooperation with police, good behavior while in custody, and family support. The court credited Hooks with not forcing the bank employees to relive their experiences by testifying at a trial. The court considered the community's interest in sending a message to others considering similar crimes and that people have the right to feel safe at their workplaces. The court considered Hooks' prior criminal record and the repeated and planned nature of these crimes to be aggravating factors. The court set restitution in the amount stolen in the robberies, to be joint and several with any other co-actors who may be convicted. Hooks was linked to these robberies through DNA analysis of hair found on a wig, and the court premised its decision that Hooks should pay a single DNA surcharge on the fact that DNA is "expensive" and was actually used in this case. The court considered appropriate factors in imposing sentence, setting restitution, and imposing a DNA surcharge, all consistent with requirements and maximums.

In a postconviction motion, Hooks asked for resentencing based on a new factor, namely, the court was not informed that Hooks' father had been murdered when Hooks was four years old. "A 'new factor' is 'a fact or set of facts highly relevant to the imposition of sentence, but not known to the circuit judge at the time of original sentencing, [and] even though it was then in existence, it was unknowingly overlooked by all of the parties.'" *See* ***State v. Lechner***, 217 Wis. 2d 392, 423-24, 576 N.W.2d 912 (1998) (quoted source omitted). The decision whether a new factor exists is a question of law reviewed de novo. *See* ***id.*** at 424. The circuit court's

determination of whether or not the new factor justifies a different sentence is overturned only when the court erroneously exercised its discretion. *See* ***id.***

In its order denying the motion, the court noted that Hooks had been sentenced to "substantially less confinement than the State had requested" and that many "mitigating factors" had been considered. The court acknowledged that, while the murder of Hooks' father was information that the court "would have wanted to know …, there is nothing connecting the impact of that event … to [Hooks'] conduct nearly 20 years later in this case and therefore no reason to believe that [the sentencing judge] would have assigned any significant mitigating value to it." The court ruled that the new information was not a new factor and, even if it were considered to be a new factor, it did not justify modification of the sentence in light of Hooks' profanity-laced outburst after sentence was imposed. An appellate challenge to that order would lack merit.

Upon our independent review of the record, we have found no arguable basis for reversing the judgment of conviction or postconviction order. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dianne M. Erickson is relieved of any further representation of Anthony Hooks in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals