



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 13, 2017

To:

Hon. Dennis P. Moroney
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

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

Russell J. A. Jones
Jones Law Firm LLC
12557 W. Burleigh St., Ste. 8
Brookfield, WI 53005

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

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Malik A. Jenkins 581657
Oakhill Corr. Inst.
P.O. Box 938
Oregon, WI 53575-0938

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

2016AP1168-CRNM State of Wisconsin v. Malik A. Jenkins
(L.C. #2015CF000883)

Before Brennan, P.J., Kessler and Dugan, JJ.

Malik A. Jenkins appeals a judgment entered after he pled guilty to fleeing or eluding a traffic officer resulting in bodily harm. *See* WIS. STAT. § 346.04(3) (2015-16).¹ Jenkins' postconviction and appellate lawyer, Russell J. A. Jones, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Jenkins did not respond. After independently reviewing the record and the no-merit report, we conclude there

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

are no issues of arguable merit that could be raised on appeal and summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

As set forth in the criminal complaint, which provided a factual basis for Jenkins' plea, in February 2015, police officers observed a vehicle accelerate to approximately forty miles per hour in a twenty-five-miles-per-hour zone. When the vehicle stopped at an intersection, the officers additionally observed that the high-mount stop lamp was defective and that the driver turned without signaling. As the officers followed the vehicle, they saw that it slowed but did not make a complete stop at an intersection. When an officer eventually activated the emergency lights and siren on his marked police vehicle, the vehicle increased its speed.

The officers were in the process of deactivating the emergency lights and siren and broadcasting the fleeing vehicle when, after disregarding a stop sign at an intersection, the fleeing vehicle struck another vehicle. An officer observed the driver's side door of the fleeing vehicle open and Jenkins got out. An officer conducted a custodial search and found five knotted clear plastic sandwich bags containing a substance that tested positive for tetrahydrocannabinols (THC).

The driver of the other vehicle was injured in the crash and was taken to the hospital. The passenger in Jenkins' vehicle was also injured. Both of the vehicles were damaged. A witness told officers that he saw Jenkins' vehicle accelerate, run a stop sign, and crash into the other vehicle.

In his no-merit report, counsel addresses whether there would be any arguable merit to an appeal on two issues: (1) the validity of Jenkins' plea and (2) the circuit court's exercise of

sentencing discretion. For reasons explained below, we agree with the conclusion that there would be no arguable merit to pursuing these issues on appeal.

Plea

Counsel first addresses whether Jenkins has an arguably meritorious basis for challenging his plea on appeal. Pursuant to the plea agreement, Jenkins pled guilty to fleeing or eluding a traffic officer resulting in bodily harm. In exchange, the State moved to dismiss and read in a misdemeanor possession of THC charge. The State further agreed that it would not make a specific recommendation as to the length of Jenkins' sentence but that it would be requesting restitution and a no-contact order. Jenkins confirmed this was his understanding of the plea agreement.

To be valid, a guilty plea must be knowing, intelligent, and voluntary. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Jenkins completed a plea questionnaire and waiver of rights form, *see State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The relevant jury instructions were attached to the form. The form listed, and the court explained, the maximum penalties Jenkins faced. The form, along with an addendum, further specified the constitutional rights that Jenkins was waiving with his plea. *See Bangert*, 131 Wis. 2d at 270-72. Additionally, the circuit court conducted a plea colloquy as required by WIS. STAT. § 971.08, *Bangert*, and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. There would be no arguable merit to challenging the validity of Jenkins' guilty plea.

Sentencing

The next issue the no-merit report discusses is the circuit court's exercise of sentencing discretion. We agree that there would be no arguable basis to assert that the circuit 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 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.

Jenkins and his attorney addressed the court. After listening to these remarks, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny.

With respect to the severity of the sentence, we note that Jenkins faced a sentence of three years of initial confinement and three years of extended supervision. *See* WIS. STAT. §§ 346.04(3), 346.17(3)(b), 939.50(3)(h), 973.01(2)(b)8. & (d)5. The circuit court sentenced Jenkins to half of the maximum time available: eighteen months of initial confinement and

eighteen months of extended supervision. Additionally, the circuit court made Jenkins eligible for the Challenge Incarceration Program and the Substance Abuse Program. This sentence does not shock the public's sentiment. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. There would be no arguable merit to a challenge to the circuit 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 Russell J. A. Jones is relieved of further representation of Jenkins in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals