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

2016AP1420-CRNM State of Wisconsin v. Robert A. Hunt
(L.C. #2015CF987)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert A. Hunt appeals from a judgment of conviction for one count of third-degree sexual assault, contrary to WIS. STAT. § 940.225(3) (2015-16).[1] Hunt's postconviction/appellate counsel, William T. Croke, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Hunt has not filed a response. We have independently reviewed the record and the no-merit report as mandated by ***Anders*** and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

Hunt was originally charged with one count of second-degree sexual assault. The criminal complaint alleged that in 2015, Hunt was visiting a female friend and asked to sleep in her bed with her. She agreed but indicated there would be no physical relationship. The next morning, the woman awoke with her pajama pants partially removed. She believed Hunt may have had sex with her, although she did not recall having sex or consenting to it. A detective spoke with Hunt, who "admitted having sexual intercourse" with the victim while she "was very groggy or asleep." He told the officer "that he knew it was wrong."

Hunt did not file any pretrial motions challenging his statement.[2] He entered a plea agreement with the State pursuant to which he agreed to plead guilty to the reduced charge of

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

[2] The record does not reveal any potential basis to challenge the legality of Hunt's interrogation, which, according to the detective who questioned Hunt, lasted "about an hour."

third-degree sexual assault, which lowered his total exposure from forty years to ten years.[3] The State agreed to recommend a prison sentence with the length left to the trial court's discretion.

The trial court conducted a plea colloquy, accepted Hunt's guilty plea, and found him guilty. Neither party requested a PSI report, and the trial court did not order one. The trial court sentenced Hunt to four years of initial confinement and four years of extended supervision. It also ordered Hunt to provide a DNA sample and pay mandatory court costs and surcharges, which included a mandatory $250 DNA surcharge. *See* WIS. STAT. § 973.046(1r)(a).

Postconviction/appellate counsel subsequently filed a no-merit notice of appeal. Counsel's no-merit report addresses two issues: (1) whether Hunt's guilty plea was knowingly and voluntarily entered; and (2) whether the trial court erroneously exercised its sentencing discretion or imposed an illegal sentence. Counsel concludes there would be no merit to challenge Hunt's guilty plea or sentence. This court agrees with counsel's description and analysis of the potential issues identified in the no-merit report, and we independently conclude that pursuing those issues would lack arguable merit. We will briefly discuss those issues.

We begin with Hunt's guilty plea. There is no arguable basis to allege that it was not knowingly, intelligently, and voluntarily entered. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). He completed a plea questionnaire and waiver of rights form, as well as an addendum, which the trial court referenced during the plea hearing.[4]

[3] The State explained that the victim had agreed to the reduction in charge, in part to avoid having to testify at trial.

[4] The jury instructions for third-degree sexual assault, which stated the elements of the crime, were also attached to the guilty plea questionnaire.

See ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The trial court conducted a thorough plea colloquy that addressed Hunt's understanding of the plea agreement and the charge to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving by entering his plea. *See* § 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 trial court explained the maximum sentence was ten years and went over the elements of third-degree sexual assault. The trial court confirmed with Hunt that he knew the trial court was not a party to the plea agreement. The trial court also discussed with Hunt the constitutional rights he was waiving, such as his right to a jury trial. In addition, the trial court determined that the criminal complaint provided a factual basis for the plea, as trial counsel stipulated. Finally, the trial court confirmed with Hunt that he understood he would be required to register as a sex offender and could potentially be subject to a WIS. STAT. ch. 980 commitment in the future.

Based on our review of the record, we conclude that the plea questionnaire, waiver of rights form, Hunt's conversations with his trial counsel, and the trial court's colloquy appropriately advised Hunt of the elements of the crime and the potential penalties he faced, and otherwise complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that the plea was knowing, intelligent, and voluntary. The record does not suggest there would be an arguable basis to challenge Hunt's plea.

The next issue we consider is the sentencing. We conclude there would be no arguable basis to assert that the trial 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 trial 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 trial 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 trial court's discretion. *See* ***Gallion***, 270 Wis. 2d 535, ¶41.

In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in ***Gallion*** and its progeny. Its sentencing comments addressed Hunt's character, including his education, his work history, and his prior problems with gambling, which had led to previous criminal convictions. It gave Hunt credit for accepting responsibility. The trial court also discussed the offense, noting that it was "a very serious matter" involving a vulnerable victim that was "aggravated because he took advantage of her trust." The trial court recognized that the State could have pursued the more serious charge of second-degree sexual assault and that Hunt had benefitted from the reduction in the charge. The trial court discussed the need to protect the public, stating that probation would not be appropriate to protect the public, "particularly considering this occurred while the defendant was under supervision" for past crimes. The trial court also commented on Hunt's "increasing

criminality" and said that he needed an adequate sentence to punish him and deter him from future criminal conduct.

Our review of the sentencing transcript leads us to conclude that there would be no merit to challenge the trial court's compliance with ***Gallion***. Further, there would be no merit to assert that the sentence was excessive. *See* ***Ocanas***, 70 Wis. 2d at 185. While the trial court imposed a sentence that was eighty percent of the maximum, there would be no arguable merit to alleging that the sentence was overly harsh. As the trial court noted, Hunt benefitted greatly from the charge reduction, which reduced his maximum total exposure from forty years to ten years. Given Hunt's criminal history, the reduction in charge, and the facts of this case, there would be no arguable basis to allege that the sentence was excessive.

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 William T. Croke is relieved of further representation of Hunt in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals