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DISTRICT I

December 22, 2020

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

2020AP38-CRNM State of Wisconsin v. Shanta Dwan Pearson (L.C. # 2016CF2777)

Before Brash, P.J., Dugan and White, 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).

Shanta Dwan Pearson appeals from a judgment, entered upon his guilty pleas, convicting him on one count of kidnapping as a party to a crime and one count of robbery of a financial institution. Appellate counsel, Patrick Flanagan, has filed a no-merit report, pursuant to *Anders*

v. California, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).¹ Pearson was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal, so we summarily affirm the judgment.

On May 6, 2016, a man walked into a bank on North 76th Street in Milwaukee and demanded money from a teller, pulling up his sleeve to display what the teller believed to be a gun. When the teller gave the man money from her drawer, he demanded to know where the hundred-dollar bills were. As the teller was opening another drawer, the man fled the bank. Police obtained high-quality surveillance videos, from which they were able to produce several still photos of the robber's face. These pictures were made available to local news media.

On May 10, 2016, police received two anonymous tips identifying the man in the photos as Pearson. An officer confirmed the identification by comparing the photos to a file booking photo of Pearson. One of the bank employees identified Pearson from a photo array. Pearson was also subsequently affirmatively identified as the man in the robbery photos by his twenty-three year old son, his son's mother, his ex-wife, his girlfriend's mother, and his girlfriend's sister. On May 11, 2016, Pearson and his girlfriend Tiffany Simmons were arrested on active Wisconsin arrest warrants during a traffic stop in Colorado.²

On May 14, 2016, the West Allis Police Department began investigating a missing persons report about T.W., who had last been seen ten days prior, on May 4, 2016, by the aunt

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² The warrants do not appear to have been related to the charges in this case.

with whom she lived. It turned out that T.W. was a friend of Pearson and Simmons, who had given her a ride to the mall on May 4. T.W. wanted to return items to a department store, possibly to get money for drugs, which she needed because Simmons had previously stolen \$200 from T.W.'s bank account. When T.W. was finished at the mall, she returned to Pearson's Chevrolet Avalanche. As Pearson drove, T.W. climbed into the back where Simmons was, and the women began fighting.

Afraid that he would get stopped by police because of the fight in the back, Pearson stopped his vehicle and "used some rope to tie [T.W.'s] hands behind her back and 'lay her down' in the back of the truck." Pearson eventually parked in front of his apartment, with T.W. still in the back. Simmons later joined Pearson in the apartment, where they smoked crack cocaine until sunrise, but Simmons had already killed T.W. in the back of the Avalanche, and the next morning, she told Pearson they needed to hide the truck.

Ultimately, it was determined that Pearson had robbed the bank to finance his and Simmons' flight from Wisconsin. They first went to Minnesota, where they attempted to dispose of T.W.'s body by lighting it on fire, but they underestimated how much fuel would be needed. They took the partially burnt body with them to South Dakota, where they burned it further. They had intended to return for the body again, but Simmons believed they had been spotted, so they did not return.

On May 17, 2016, two South Dakota farmers discovered charred human remains next to a blue plastic tub in a bean field and alerted authorities. There were various items in the tub, including a woman's tennis shoe. A South Dakota coroner conducted an autopsy on the remains. "No anatomic cause of death was able to be determined because the body was decomposed and

had obviously been burned post-mortem ... [but the] remnants of a rope or cord and metal wire were observed on the anterior neck, consistent with ligature strangulation.” There was sufficient tissue to recover for DNA analysis, which was matched to T.W. in South Dakota’s database.³ A DNA profile was also developed from the woman’s tennis shoe; it matched to Simmons.

Pearson and Simmons were returned to Wisconsin, arriving on June 4, 2016. Both eventually confessed to their roles in T.W.’s disappearance and death, though Pearson denied committing the robbery. Pearson was charged with felony murder as a party to a crime, hiding a corpse as a party to a crime, and robbery of a financial institution.⁴

On the morning of trial, Pearson entered a guilty plea to the robbery charge, without having made any plea agreement with the State. The circuit court conducted a plea colloquy on that charge. Jury selection for the felony murder and corpse-hiding charges began. By the afternoon, Pearson had reached an agreement with the State on the two offenses. In exchange for Pearson’s guilty plea, the State would amend the felony murder charge to its predicate, kidnapping, and dismiss and read-in the charge of hiding a corpse. Both sides would be free to argue for an appropriate sentence. The circuit court conducted a second plea colloquy, and ordered that a judgment of conviction for the robbery and the kidnapping be entered. Later, Pearson was sentenced on each offense to a term of fifteen years’ initial confinement and ten years’ extended supervision, consecutive to each other and consecutive to any other sentence,

³ Based on information from her family, T.W. had gone to South Dakota in 2010 for a treatment program. She got into a scuffle with another person that resulted in both of their arrests, at which time South Dakota authorities collected DNA samples.

⁴ Simmons was charged with first-degree intentional homicide, hiding a corpse, and kidnapping, all as a party to a crime. She eventually pled guilty to the homicide and kidnapping charges and was sentenced to life imprisonment without eligibility for extended supervision.

including a revocation sentence for which Pearson's release date was calculated to be some point in 2028.⁵ Pearson appeals.

The first issue appellate counsel discusses in the no-merit report is whether Pearson's pleas were knowing, intelligent, and voluntary. From our review of the record, we are satisfied that the no-merit report properly analyzes this issue as being without arguable merit, and we will not discuss it further.

The second issue appellate counsel discusses in the no-merit report is whether the circuit court erroneously exercised its sentencing discretion by imposing an unduly harsh sentence. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

At sentencing, a 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 determine which objective or objectives are of greatest importance, *see Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider a variety of additional factors. *See 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 id.*

⁵ The Honorable Carolina Stark accepted Pearson's pleas; the Honorable David L. Borowski imposed sentence.

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The fifty-year sentence imposed is well within the eighty-year range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public’s sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We thus agree with appellate counsel’s analysis in the no-merit report and the conclusion that there would be no arguable merit to challenging the circuit court’s exercise of its sentencing discretion.

Finally, appellate counsel discusses whether there is any arguable merit to a claim that Pearson received ineffective assistance of trial counsel. We agree with appellate counsel’s conclusion in the no-merit report that “[t]here is nothing in the record to indicate that Pearson’s lawyer was ineffective,” and we will not discuss this issue further.

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 Patrick Flanagan is relieved of further representation of Pearson in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals