



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

November 23, 2021

To:

Hon. Frederick C. Rosa
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Christopher P. August
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
Electronic Notice

Jaiquan M. Tucker 649847
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2019AP2373-CRNM	State of Wisconsin v. Jaiquan M. Tucker (L.C. # 2017CF2687)
2019AP2374-CRNM	State of Wisconsin v. Jaiquan M. Tucker (L.C. # 2017CF3615)

Before Brash, C.J., Donald, P.J., and White, J.

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).

Jaiquan M. Tucker appeals from judgments, entered upon his guilty and no contest pleas, convicting him of eight felony offenses. Appellate counsel has filed a consolidated no-merit report.¹ See *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).² Tucker was advised of his right to file a response, but he has not responded. Upon this

¹ The no merit report was filed by Attorney Leon W. Todd, III, who has been replaced by Attorney Christopher P. August as Tucker's appellate counsel.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

court's independent review of the records, as mandated by *Anders*, and the no-merit report, we conclude that, subject to correction of a clerical error in one of the judgments, there are no issues of arguable merit that could be pursued on appeal. Thus, we summarily affirm the judgments.

On May 22, 2017, and June 2, 2017, police officers attempted to conduct traffic stops of vehicles Tucker was driving. The vehicles had been reported stolen, and Tucker fled from the police both times. He was apprehended following his flight on June 2. Tucker was charged with thirteen offenses in Milwaukee County Circuit Court case No. 2017CF2687: two counts of operating a motor vehicle without the owner's consent; two counts of fleeing or eluding; two counts of second-degree recklessly endangering safety; two counts of felony bail jumping; possession with intent to deliver less than three grams of heroin; possession with intent to deliver between fifteen and forty grams of cocaine; possession of a schedule II narcotic; possession of a firearm by a felon; and misdemeanor possession of marijuana.³ Each charge except the misdemeanor also carried the habitual criminality enhancer.

On May 27, 2017, Officer Dustin McInnes and his partner responded to a "shot spotter" complaint of shots fired. Upon arrival, they noticed a vehicle at the location; the driver had his head against the window and his eyes closed. The officers approached to see if the man was injured and saw a firearm on his lap. McInnes opened the driver's door in an attempt to secure the firearm and check the driver. The driver woke up and began to "bat hands" with McInnes. McInnes was able to secure the firearm, but the driver fled in the vehicle. On June 7, 2017, a photo array was presented to McInnes; he identified Tucker as the fleeing driver. As a result,

³ The gun and drug charges were based on items found in a search of the second vehicle following Tucker's arrest.

Tucker was charged with two offenses in Milwaukee County Circuit Court case No. 2017CF3615: possession of a firearm by a felon and felony bail jumping, both with the habitual criminality enhancer.⁴

The State moved for joinder of the two cases. Tucker opted not to challenge the motion. The circuit court, agreeing with the analysis in the State’s motion, granted the joinder request. Tucker subsequently agreed to resolve the cases through a plea agreement. Under the agreement, Tucker would plead guilty to the two counts of operating a motor vehicle without the owner’s consent, the two counts of second-degree recklessly endangering safety, and the second felon-in-possession charge, as well as no contest to the two possession-with-intent charges and the first felon-in-possession charge. In exchange, the State would dismiss the habitual criminality enhancers and would recommend a global sentence of ten to fifteen years of initial confinement with the extended supervision term left to the court. The circuit court accepted Tucker’s pleas and imposed concurrent and consecutive sentences totaling twelve years of initial confinement and ten years of extended supervision. Tucker appeals.

The first potential issue the no-merit report discusses is whether Tucker “has a basis to withdraw his guilty pleas because they were not knowingly, voluntarily, and intelligently entered, or because they were not supported by a factual basis.”⁵ Our review of the records,

⁴ At the time Tucker committed the offenses in these two cases, he had been released on bond in Waukesha County Circuit Court case No. 2016CF1046.

⁵ The no-merit report does not address whether the cases were properly joined. However, our review of the record satisfies us that Tucker made a knowing and intentional waiver of any challenge to the joinder issue—the circuit court engaged him in a colloquy about such waiver—and that, in any event, joinder was properly granted for the reasons identified in the State’s motion. *See* WIS. STAT. § 971.12(1), (4); *see also State v. Salinas*, 2016 WI 44, ¶¶30-35, 369 Wis. 2d 9, 879 N.W.2d 609.

including the plea questionnaire and waiver of rights forms and the plea hearing transcript, confirms that the circuit court generally complied with its obligations and the appropriate procedures for ensuring a knowing, intelligent, and voluntary plea. *See* WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

Beyond a basic recitation of the charges as described by the complaint, the circuit court did not explicitly review the elements of the offenses with Tucker in order to ascertain his understanding. *See* WIS. STAT. § 971.08(1)(a) (“Before the court accepts a plea of guilty or no contest, it shall ... [a]ddress the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge[.]”). The circuit court did, however, take other steps to establish Tucker’s understanding of the crimes. *See id.*; *see also Bangert*, 131 Wis. 2d at 267-68. The circuit court first confirmed that Tucker had reviewed the plea questionnaire forms with counsel and that he had signed and understood them. The circuit court next noted that copies of the jury instructions for each offense were included with the plea forms.⁶ The circuit court then asked Tucker, “Did your attorney explain to you exactly what the State would have to prove for you to be convicted of each one of these offenses?” Tucker answered, “Yes, sir.” Finally, the circuit court asked if Tucker understood counsel’s explanation, and Tucker again answered affirmatively.

⁶ The following instructions were used: WIS JI—CRIMINAL 1343 (possession of a firearm by a felon), 1347 (second-degree reckless endangerment), 1465 (operating a motor vehicle without the owner’s consent), and 6035 (possession with intent to deliver a controlled substance). We observe that Tucker initialed each set of instructions.

We also note that, as part of the colloquy, the circuit court appropriately explained the effect of both no-contest pleas and read-in offenses to Tucker. In addition, we observe that, to establish a factual basis for the pleas, the circuit court asked Tucker whether “the facts in each one of these complaints [are] true and correct[.]” Tucker responded affirmatively and declined the opportunity to “clear up” anything in either complaint.

Therefore, based on the entirety of the record, we are satisfied that there is no arguable merit to a claim that the circuit court failed to fulfill its obligations during the plea colloquy, that there was no factual basis for Tucker’s pleas, or that Tucker’s pleas were anything other than knowing, intelligent, and voluntary.

The other issue the no-merit report addresses is whether these matters should be remanded for resentencing because 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. 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 several other 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.*

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The twenty-two-year sentence imposed is well within the eighty-four-year and six-month 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). There would be no arguable merit to a challenge to the circuit court's sentencing discretion.

As noted, there is a scrivener's error in one of the judgments. The judgment of conviction for Milwaukee County Circuit Court case No. 2017CF2687 states, in relevant part, "Court orders restitution in the amount of \$5,378.65 payable to Enterprise Rent-A-Car." However, that amount is incorrect. Enterprise requested, and the circuit court ordered, restitution in the amount of \$5,370.65. Upon remittitur, the judgment of conviction in Milwaukee County Circuit Court case No. 2017CF2687 shall be amended to reflect the correct amount of restitution the circuit court ordered payable to Enterprise.⁷ *See State v. Prihoda*, 2000 WI 123, ¶¶26-27, 239 Wis. 2d 244, 618 N.W.2d 857. Any necessary corresponding adjustments to the calculations of the restitution surcharges shall also be made.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that, upon remittitur, the judgment of conviction in Milwaukee County Circuit Court case No. 2017CF2687 shall be modified as described herein.

⁷ We note that \$1,892 was awarded to the other victims in this case. That amount correctly reflects the circuit court's order and should not be modified.

IT IS FURTHER ORDERED that the judgment of conviction in Milwaukee County Circuit Court case No. 2017CF2687, as modified, is summarily affirmed.

IT IS FURTHER ORDERED that the judgment of conviction in Milwaukee County Circuit Court case No. 2017CF3615 is summarily affirmed.

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved of further representation of Tucker in these matters. *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