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DISTRICT I

November 19, 2024

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Bradley J. Lochowicz
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1903-CRNM State of Wisconsin v. Tramel Tyrone Moore (L.C. # 2020CF2220)

Before Donald, P.J., Geenen and Colón, 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).

Tramel Tyrone Moore appeals from a judgment convicting him of one count of second-degree reckless homicide and one count of second-degree recklessly endangering safety. Appellate counsel, Bradley J. Lochowicz, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22), and *Anders v. California*, 386 U.S. 738 (1967).¹ Moore received a copy of the report, was advised of his right to file a response, and has responded. Appellate counsel filed a supplemental no-merit report, and then filed a second supplemental report in response to an

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

order from this court. We have independently reviewed the record, the no-merit report, the response, and the supplemental reports, as mandated by *Anders*, and we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The State charged Moore with one count of second-degree reckless homicide with the use of a dangerous weapon as a party to a crime, one count of second-degree recklessly endangering safety with the use of a dangerous weapon as a party to a crime, and one count of being a felon in possession of a firearm. The charges stemmed from a shooting incident that left one person dead and one person injured.

Moore pled guilty to one count of second-degree reckless homicide and one count of second-degree recklessly endangering safety. The penalty enhancers and remaining charge were dismissed and read in. The circuit court conducted a colloquy with Moore and accepted his pleas. The circuit court sentenced Moore to twenty-two years of initial confinement and seven years of extended supervision on the reckless homicide charge and a consecutive five years of initial confinement and three years of extended supervision on the reckless injury charge. The defense also stipulated to restitution.

Following sentencing, Moore filed a postconviction motion arguing that the circuit court erroneously exercised its discretion by failing to state the goals and objectives of its sentencing decision. The postconviction court denied the motion. This no-merit report follows.

The no-merit report addresses the following issues: (1) whether there is a basis to withdraw Moore's guilty pleas; (2) whether the circuit court erroneously exercised its sentencing discretion; (3) whether Moore's sentences should have been concurrent rather than consecutive;

and (4) whether the circuit court properly denied Moore’s postconviction motion for a new sentence.

With regard to Moore’s guilty pleas, our review of the record—including the plea questionnaire/waiver of rights form, the addendum, the jury instructions (initialed by Moore), and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.² These obligations exist specifically to help ensure the validity of any plea. We thus agree with appellate counsel’s conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that Moore’s pleas were anything other than knowing, intelligent, and voluntary. The record does not establish that any other form of a manifest injustice exists. See *State v. Villegas*, 2018 WI App 9, ¶18, 380 Wis. 2d 246, 908 N.W.2d 198 (explaining that a defendant who seeks to withdraw a plea after sentencing must prove that the withdrawal is necessary to correct a manifest injustice).

With regard to the circuit court’s sentencing decision, we note that sentencing is a matter for the circuit court’s discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court should 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

² There is one exception to this. During the plea colloquy, the circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, as there is no indication that Moore’s plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization.

76. It should also 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 must consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *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 court’s discretion. *Id.* The record reveals that the court considered and applied the relevant sentencing factors. The resulting sentence was within the potential maximum 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).

As to whether the sentences should have been concurrent rather than consecutive, the circuit court provided a “rational and explainable basis” for the sentences imposed. *See Gallion*, 270 Wis. 2d 535, ¶39 (citation omitted).

We also note that the judgement of conviction states that Moore is ineligible for the Substance Abuse Program and Challenge Incarceration Program, though the circuit court did not discuss the programs at sentencing. Nonetheless, we conclude that there is no arguably meritorious issue to pursue on appeal relating to the court’s omission of this sentencing component. Moore is statutorily ineligible for the programs while serving his sentence for second-degree reckless homicide. *See* WIS. STAT. §§ 302.045(2)(c), 302.05(3)(a)1., 940.06(1). While there is no statutory bar to Moore’s eligibility for the Substance Abuse Program during the term of his sentence for recklessly endangering safety, the court is not required to make completely separate findings on the reasons for the eligibility decision, so long as the overall sentencing rationale also justifies the determination. *See State v. Owens*, 2006 WI App 75, ¶9,

291 Wis. 2d 229, 713 N.W.2d 187; *see also State v. Tobatto*, 2016 WI App 28, ¶17, 368 Wis. 2d 300, 878 N.W.2d 701 (holding that the court of appeals may search the record to determine if it supports circuit court’s discretionary decision). Here, the court discussed the aggravated nature of the offenses, Moore’s impulsive conduct, and the impact on the victims. The record reflects that the court did not intend for Moore to be eligible for either program.

Based upon the foregoing, there is no arguable merit in challenging any aspect of the circuit court’s sentencing decision.

Along those same lines, there would be no arguable merit to a claim that the postconviction court erroneously denied Moore’s postconviction motion for a new sentence. We agree with the postconviction court’s determination that “[t]he sentencing transcript shows that the court considered the ‘total’ defendant in terms of the gravity of his conduct, the impact on the victims, his character and rehabilitative needs, and interests of the community, and that the court did not misuse its sentencing discretion in any respect.”

In his response, Moore contends that his defense counsel was ineffective for failing to object to video footage of the shooting, played at sentencing, which lacked audio. Moore contends that the lack of audio allowed for the circuit court to sentence him based on inaccurate information because the court was not able to properly assess his character. Appellate counsel’s supplemental no-merit report properly addresses the standard this court must consider when determining whether a defendant was sentenced based on inaccurate information. We agree with counsel’s analysis on this issue, specifically, that Moore’s version of events was consistently presented throughout the proceedings and that the circuit court did not express doubt about Moore’s version. Rather, the circuit court focused on the gravity of Moore’s conduct, the impact

on the victims, as well as mitigating factors. Accordingly, counsel was not ineffective for failing to object to the video footage presented at sentencing. *See State v. Counihan*, 2020 WI 12, ¶51 n.15, 390 Wis. 2d 172, 938 N.W.2d 530 (“The failure to raise a meritless objection does not constitute deficient performance.”).

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 Bradley J. Lochowicz is relieved of further representation of Tramel Tyrone Moore in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals