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DISTRICT II

June 18, 2025

To:

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Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
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Jermaine E. Harris Sr., #482565
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1496-CRNM State of Wisconsin v. Jermaine E. Harris, Sr. (L.C. #2022CF732)

Before Neubauer, Grogan, and Lazar, 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).

Jermaine E. Harris, Sr., appeals a judgment of conviction, entered on his guilty plea for retail theft—intentionally taking an amount that exceeds $500 but does not exceed $5,000—and order denying his postconviction motion. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Harris was advised of his right to file a response and has not responded. After reviewing the Record

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21.

According to a criminal complaint, on April 22, 2022, surveillance video showed Harris enter a Kohl's Department Store and remove two large suitcases without rendering payment. The suitcases were valued at $958. Then, on April 29, 2022, surveillance video showed Harris enter the same Kohl's Department Store and begin filling two large suitcases with fragrances and Nike and Calvin Klein underwear. Police were dispatched to a retail theft in progress. An officer stopped Harris after he exited the store with the two suitcases without making any attempt to pay for the merchandise. The total value of merchandise taken during this occurrence was $3,041.98. The State charged Harris with two counts of retail theft—intentionally taking an amount that exceeds $500 but does not exceed $5,000. Both counts contained the repeater enhancer.

Pursuant to a plea agreement, Harris pled guilty to one count of retail theft. In exchange, the State agreed to strike the repeater enhancer and moved to dismiss and read in the remaining retail theft count. The parties jointly recommended the circuit court impose a maximum sentence of 18 months' initial confinement and two years' extended supervision to be stayed for three years' probation. After considering the sentencing factors, the court determined probation was inappropriate, and it sentenced Harris to 18 months' initial confinement and two years' extended supervision.

Harris filed a postconviction motion for sentence modification based on a new sentencing factor. By written order, the circuit court denied the motion, reasoning the motion did not identify a new factor that justified sentence modification. This no-merit appeal follows.

The no-merit report addresses potential issues of whether Harris's plea was knowingly, voluntarily, and intelligently entered, whether the circuit court properly exercised its discretion at sentencing, and whether the court properly exercised its discretion by denying Harris's motion for sentence modification. Upon reviewing the Record, we agree with counsel's analysis and conclusion that there is no arguable basis to pursue any of these issues. We briefly comment on them.

With regard to the circuit court's plea colloquy, appellate counsel points out that the court did not expressly ask Harris during the plea hearing whether his plea had been improperly induced by any threats or promises. However, counsel advises this court that there is no merit to seek plea withdrawal on this basis because "[t]hat information was included in the plea questionnaire, and Mr. Harris would be unable to meet his burden to obtain an evidentiary hearing based on this defect in the colloquy." We agree with counsel that there is no arguable merit to seek plea withdrawal on this basis. *See* ***State v. Brown***, 2006 WI 100, ¶39, 293 Wis. 2d 594, 716 N.W.2d 906 (motion for plea withdrawal based on plea colloquy deficiency must "allege that the defendant did not know or understand the information that should have been provided at the plea hearing.").

The remainder of the circuit court's plea colloquy sufficiently complied with the requirements of ***Brown***, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Harris was waiving, and other matters. The Record shows no other ground to withdraw the plea. We therefore agree with counsel's analysis and conclusion that any challenge to the validity of Harris's plea would lack arguable merit.

With regard to the circuit court's sentencing discretion, our review of the Record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Although Harris did receive a maximum sentence, the sentence was 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). At sentencing, the court noted Harris's lengthy criminal record that included "a lot of retail theft." The court characterized Harris's theft in which he used suitcases to "effective[ly] and efficient[ly]" fill with merchandise so he could easily move it as "pretty heavy-duty." The court also found "striking" that Harris's dismissed-and-read-in retail theft count occurred at the same store within a two-week time frame. We conclude there would be no arguable merit to a challenge to the court's sentencing discretion.

After sentencing, Harris moved for sentence modification on the basis of a new factor. "Deciding a motion for sentence modification based on a new factor is a two-step inquiry." ***State v. Harbor***, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Harris first must demonstrate by clear and convincing evidence the existence of a new factor. ***Id.*** A new factor is defined as a fact or a set of facts that is "*highly relevant to the imposition of sentence*, but not known to the [circuit court] at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***Id.***, ¶40 (emphasis added). Whether a fact or set of facts is a "new factor" is a question of law. ***Id.***, ¶36. If a new factor exists, the circuit court then exercises its discretion to determine whether that new factor justifies sentence modification. ***Id.***, ¶37.

Here, Harris moved for sentence modification on the basis that approximately one month after sentencing his wife and mother of his three children passed away unexpectedly. The circuit court found, without a hearing, that "[t]he death of a spouse is not a new factor which justifies a modification of the sentence." We agree with appellate counsel that, even assuming that the death of a spouse is a new factor, the court adequately exercised its discretion to determine that it did not warrant the modification of the sentence. *See* ***id.***, ¶37.

Our independent review of the Record discloses no other potential issues for appeal. This court accepts the no-merit report, affirms the judgment of conviction and order denying postconviction relief, and discharges appellate counsel of the obligation to represent Harris further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Olivia Garman is relieved of further representation of Jermaine E. Harris, Sr., in this appeal. *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