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DISTRICT I

June 24, 2025

To:

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Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
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Clerk of Circuit Court
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David Malkus
Electronic Notice

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

2024AP1528-CRNM State of Wisconsin v. Markiel Derius Hendricks
(L.C. # 2020CF3752)

Before White, C.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).

Markiel Derius Hendricks appeals from a judgment convicting him of one count of being a felon in possession of a firearm and one count of fleeing or eluding an officer, and from an order denying his postconviction motion. Appellate counsel, David Malkus, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).¹ Hendricks was advised of his right to file a response but has not responded. Upon

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

consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The State initially charged Hendricks with nine crimes: one count of stalking, three counts of first-degree recklessly endangering safety, three counts of possession of a firearm by a person convicted of a felony, one count of endangering safety by use of a dangerous weapon, and one count of fleeing or eluding an officer. Each charge carried the habitual criminality penalty enhancer and three charges carried domestic abuse assessments.

Ultimately, Hendricks pled guilty to one count of fleeing or eluding an officer and one count of possession of a firearm as a felon. The State moved to dismiss the remaining charges as well as the penalty enhancers. The circuit court conducted a colloquy with Hendricks and accepted his pleas. The court sentenced Hendricks to five years of initial confinement and five years of extended supervision for possession of a firearm, and one-and-one-half years of initial confinement and two years of extended supervision for fleeing or eluding an officer. The court made these sentences consecutive to one another, but concurrent with Hendricks's sentence in a separate case. The court also determined that Hendricks was ineligible for the Challenge Incarceration Program (CIP) and Substance Abuse Program (SAP).

Hendricks filed a postconviction motion asking the court to grant program access on the grounds that he was statutorily eligible for both programs. The court denied the motion in an oral ruling. This no-merit report follows.

Appellate counsel's no-merit report addresses three issues: (1) whether the circuit court properly accepted Hendricks's pleas; (2) whether the court erroneously exercised its sentencing

discretion; and (3) whether the postconviction court erroneously denied Hendricks's postconviction motion.

With regard to Hendricks's guilty pleas, our review of the record—including the plea questionnaire/waiver of rights form, the addendum, the jury instruction, 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. 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 Hendricks's pleas were anything other than knowing, intelligent, and voluntary.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's 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. It must also determine which objective or objectives are of greatest importance. *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 it may consider additional factors. *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.*

Our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors. The court imposed the maximum sentences authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, but the sentences are 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 for the postconviction court's denial of Hendricks's motion regarding the CIP and the SAP eligibility, the court had discretion to determine whether Hendricks was eligible for these programs and the record shows that the court exercised its discretion to determine he was not eligible. *See State v. Lehman*, 2004 WI App 59, ¶19, 270 Wis. 2d 695, 677 N.W.2d 644. We agree with counsel that there is no arguably meritorious basis to claim that the court erroneously exercised its discretion in denying the postconviction motion.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Hendricks 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