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July 7, 2015

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

2014AP1721-CRNM	State of Wisconsin v. Curtis Lee Holloway, Jr. (L.C. # 2012CF5558)
2014AP1722-CRNM	State of Wisconsin v. Curtis Lee Holloway, Jr. (L.C. # 2012CF5668)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Curtis Lee Holloway appeals judgments convicting him, after entry of guilty pleas, of two counts of armed robbery, with threat of force. *See* WIS. STAT. § 943.32(2) (2011-12).[1] Attorney Kaitlin Lamb has filed a no-merit report seeking to withdraw as appellate counsel. *See*

[1] All further references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

WIS. STAT. RULE 809.32; *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the pleas and sentences. Holloway was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Holloway entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Holloway's pleas, the State agreed to dismiss and read in two additional armed robbery counts. The circuit court conducted a standard plea colloquy, inquiring into Holloway's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Holloway understood that the court would not be bound by any sentencing recommendations. In addition, Holloway provided the court with signed plea questionnaires. Holloway indicated to the court that he understood the information explained on

that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Holloway stipulated that there was a sufficient factual basis for the pleas. He indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Holloway has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas are valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Holloway's sentences would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Holloway was afforded an opportunity to address the court prior to sentencing and that he did so personally. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court considered the seriousness of the offenses, Holloway's criminal history and character, his rehabilitative needs, and the need to protect the public.

The court then sentenced Holloway to ten years of initial confinement and five years of extended supervision in case number 2012CF5558, to run consecutive to his revocation sentence. In case number 2012CF5668, the court sentenced Holloway to ten years of initial confinement

and five years of extended supervision, to run consecutive to his sentence in case number 2012CF5558. The sentences are within the applicable penalty ranges. *See* WIS. STAT. §§ 943.32(2) (classifying armed robbery, with threat of force, as a Class C felony); 973.01(2)(b)3. and (d)2. (providing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony) (all 2011-12 statutes). Under these circumstances, it cannot reasonably be argued that Holloway's sentences are so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgments of conviction and the order granting postconviction relief are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kaitlin Lamb is relieved of any further representation of Curtis Lee Holloway in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals