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DISTRICT IV

July 13, 2015

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

2014AP1108-CRNM State of Wisconsin v. Dillan L. Ninmann (L.C. # 2013CF228)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Dillan Ninmann appeals a judgment convicting him, after entry of a no-contest plea, of misdemeanor theft of movable property and possession of THC with intent to deliver. *See* WIS. STAT. §§ 943.20(1)(a), 961.41(1m)(h)1. (2013-14).¹ Attorney Michael Rosenberg has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of*

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

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 plea and sentence. Ninmann 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. The terms of the plea agreement were stated in open court. The court's plea colloquy confirmed that Ninmann understood the elements of the offense, the penalties that could be imposed, the constitutional rights he waived by entering no contest pleas, and the fact that the court was not bound by the terms of the plea agreement. In addition, Ninmann provided the court with a signed plea questionnaire and confirmed that he did not have any questions about the questionnaire and had sufficient opportunity to review it with his lawyer. Ninmann stipulated that a factual basis existed for the pleas, and the court confirmed personally with Ninmann that he understood the stipulation. We are satisfied that the record demonstrates that the plea was knowingly, voluntarily, and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record also discloses no arguable basis for challenging the sentence imposed. The court considered the seriousness of the offense, Ninmann's character, and the need to protect the public. On the misdemeanor theft count, the court withheld sentence and ordered two years of probation. On the possession count, the court withheld sentence and ordered three years of probation, with forty-five days in jail as a condition of probation, with work release privileges for purposes of employment, education, and treatment. The sentences are within the applicable penalty ranges. *See* WIS. STAT. §§ 943.20(3)(a) (classifying theft of movable property less than or equal to \$2,500 as a Class A misdemeanor); 961.41(1m)(h)1. (classifying possession of less than or equal to 200 grams of THC with intent to deliver as a Class I felony); 939.51(3)(a)

(providing maximum term of imprisonment of nine months for a Class A misdemeanor); 939.50(3)(i) (providing maximum term of imprisonment of three years and six months for a Class I felony). Under these circumstances, it cannot reasonably be argued that Ninmann's sentence is 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 judgment 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 judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Michael Rosenberg is relieved of any further representation of Dillan Ninmann in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals