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DISTRICT IV

February 2, 2016

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

2013AP1668-CRNM	State of Wisconsin v. Matthew J. Harrington (L.C. #2011CF1034)
2013AP1669-CRNM	State of Wisconsin v. Matthew J. Harrington (L.C. #2011CM1406)
2013AP1670-CRNM	State of Wisconsin v. Matthew J. Harrington (L.C. #2011CF1833)
2013AP1671-CRNM	State of Wisconsin v. Matthew J. Harrington (L.C. #2012CF1399)
2013AP1672-CRNM	State of Wisconsin v. Matthew J. Harrington (L.C. #2012CF1583)

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

Matthew Harrington appeals three judgments convicting him of felony burglary, one judgment convicting him of felony robbery of a financial institution, two judgments convicting him of misdemeanor theft, and one judgment sentencing him after revocation on a conviction for a prior misdemeanor theft. Assistant State Public Defender William Schmaal has filed a

no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2013-14);[1] *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 Harrington's pleas on all but the revocation case and his sentences on all charges. Harrington 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.

To begin, 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. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

There are two plea hearings before us on this appeal from five related circuit court cases.[2] At the first plea hearing, Harrington entered no contest pleas to two burglary charges and two misdemeanor theft charges pursuant to a contract for referral to a drug court treatment program.

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

[2] Harrington's plea on the original misdemeanor theft charge is not before us. *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994) (an appeal from a sentence following revocation does not bring the underlying conviction before this court).

The parties' agreement was that, if Harrington successfully completed the program, the felony charges would be dismissed and Harrington would be adjudicated on only the misdemeanor charges with a joint recommendation for probation. At the second plea hearing, which occurred after Harrington had been terminated from the drug treatment program, Harrington entered additional no contest pleas to new charges of robbery of a financial institution and burglary. In exchange for those pleas, the State agreed to dismiss and read in four felony bail jumping counts, and to cap its combined recommendation for initial confinement on all five cases to no more than ten years.

The circuit court conducted appropriate colloquies at both plea hearings, inquiring into Harrington's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Harrington's 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. In addition, Harrington provided the court with signed plea questionnaires relating to each case. Harrington indicated to the court that he understood the information explained on those forms, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaints provided a sufficient factual basis for the pleas. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Harrington has not alleged any other facts that would give rise to a manifest injustice. We therefore conclude that it would be frivolous to challenge Harrington's pleas, which in turn

operated to waive any other nonjurisdictional defects or defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Harrington'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. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Harrington was afforded an opportunity to comment on the revocation summary and PSI, to present an alternate sentencing memorandum and letters and testimony from character witnesses on his behalf, and to address the circuit court, both personally and through counsel. 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. Regarding the severity of the offenses, the court noted that the three home invasions and, in particular, the bank robbery were serious in terms of frightening the victims and disrupting their sense of security. With respect to Harrington's character, the court acknowledged that the offenses were driven by heroin addiction. The court identified the primary goals of the sentencing in this case as both punishment and rehabilitation, and concluded that a significant prison term was necessary to give Harrington sufficient time to take advantage of treatment in a confined setting.

The circuit court then sentenced Harrington to concurrent terms of three years of initial confinement and four years of extended supervision on each of the burglary counts, with

concurrent nine-month sentences on each of the misdemeanor theft counts, including the sentencing after revocation; and to a consecutive six years of initial confinement and ten years of extended supervision on the bank robbery count. The court also determined that Harrington would be eligible for the Challenge Incarceration Program and the Substance Abuse Program without any court-imposed waiting period; gave the parties two weeks to submit a stipulation on sentence credit; gave the State ninety days to submit a restitution request; and imposed standard costs and conditions of supervision, with the exception of waiving any DNA surcharge.

The sentences imposed were within the applicable penalty ranges and the total imprisonment period constituted less than half of the exposure Harrington faced. *See* WIS. STAT. §§ 943.10(1m)(a) (classifying burglary of a building or dwelling as a Class F felony); 943.20(3)(a) (classifying theft of property worth less than $2,500 as a Class A misdemeanor); 943.87 (classifying robbery of a financial institution as a Class C Felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 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).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentences imposed here are not "so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507

(quoted sources omitted). That is particularly true when taking into consideration the amount of additional sentence exposure Harrington avoided on the read-in offenses and by the concurrent sentence structure on all but the most serious of the counts.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. 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 are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that counsel is relieved of any further representation of the defendant in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals