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April 15, 2016

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

2015AP349-CRNM State of Wisconsin v. Cory J. Frederiksen (L.C. #2011CF155)

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

Cory Frederiksen appeals a judgment convicting him of attempted first-degree intentional homicide by use of a dangerous weapon, as a repeat offender. Assistant State Public Defender Ellen Krahn 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.***

[1] All further references in this order to the Wisconsin Statutes are to the 2011-12 version, unless otherwise noted.

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 a suppression motion and the validity of Frederiksen's plea and sentence. Frederiksen 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. ***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.

Frederiksen entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Frederiksen's plea, the State agreed to dismiss and read in five additional felony charges with penalty enhancers. The plea agreement reduced Frederiksen's total sentence exposure by 92.5 years.

The circuit court conducted a thorough plea colloquy, inquiring into Frederiksen'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 Frederiksen understood that it would not be bound by any sentencing

recommendations, and could sentence Frederiksen up to the maximum.[2] In addition, Frederiksen provided the court with a signed plea questionnaire. Frederiksen indicated to the court that he went over the form with counsel, and is not now claiming to have misunderstood anything on it. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaint and at the preliminary hearing—namely, that Frederiksen entered the home of a neighbor, severely beat her, and tried to make off with her purse before she fought him off—provided a sufficient factual basis for the plea. Frederiksen admitted his status as a repeat offender in open court. Frederiksen also indicated that counsel had answered all of his questions, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Frederiksen has not alleged any other facts that would give rise to a manifest injustice. Therefore, Frederiksen's plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from an earlier suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

Frederiksen moved to suppress evidence that had been gathered pursuant to a warrantless arrest and search of his parents' home. We agree with counsel, however, that the police had probable cause to arrest Frederiksen after following his footprints and a blood trail from the victim's house into his parents' garage, and then seeing Frederiksen emerge from his parents' house with wet hair, a bandaged hand, and blood on his shoes. No warrant was needed to search the house because the father consented.

[2] Although it appears that the circuit court misstated the maximum as sixty-six years rather than sixty-seven years, taking into account the penalty enhancers, any error in that regard is harmless because the court did not utilize the penalty enhancers when imposing sentence.

A challenge to Frederiksen's sentence 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). Counsel has explained how the circuit court addressed 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 offense, the court commented that the horrific nature of the crime, viewed alone, would warrant a maximum sentence. With respect to Frederiksen's character, the court gave Frederiksen some credit for taking responsibility by entering a plea, and for taking medication and doing better in a structured setting.

The court then sentenced Frederiksen to thirty-two years of initial confinement and eighteen years of extended supervision. The court also awarded 388 days of sentence credit; ordered restitution in the amount of $55,257; and imposed other standard costs, surcharges, and conditions of supervision. The judgment of conviction reflects that the court determined that Frederiksen was not eligible for the challenge incarceration or substance abuse programs.

The components of the bifurcated sentence imposed were within the applicable penalty ranges and the total imprisonment period constituted about 77% of the maximum exposure Frederiksen faced. *See* WIS. STAT. §§ 940.01(1)(a) (classifying first-degree intentional homicide as a Class A felony); 939.50(3)(a) (providing life imprisonment for a Class A felony); 939.32(1)(a) (classifying the attempt to commit a crime punishable by life imprisonment as a Class B felony); 973.01(2)(b)1. and (d)1. (providing maximum terms of forty years of initial confinement and twenty years of extended supervision for a Class B felony); 939.62(1)(c)

(increasing maximum term of imprisonment for offense otherwise punishable by more than ten years by two additional years for habitual criminality based on prior misdemeanors); and 939.63(1)(b) (increasing maximum term of imprisonment for offense otherwise punishable by more than five years by an additional five years when a dangerous weapon was used).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentence imposed here was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. That is particularly true when taking into consideration the amount of additional sentence exposure Frederiksen avoided on the read-in offenses.

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 (2013-14).

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2013-14).

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) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals