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April 26, 2016

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

2015AP2343-CRNM State of Wisconsin v. Osmar Vanegas-Mejia (L.C. # 2014CF2182)

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

Osmar Vanegas-Mejia appeals a judgment convicting him, after entry of guilty pleas, of maintaining a drug trafficking place, possession of cocaine with intent to deliver, and resisting an officer. *See* WIS. STAT. §§ 961.42(1), 961.41(1m)(cm)4, and 946.41(1) (2013-14).[1] Attorney Michael Holzman 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.***

[1] All references to the Wisconsin Statutes are to the 2013-14 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 the validity of the pleas and sentence. Vanegas-Mejia 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.

Vanegas-Mejia entered guilty pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Vanegas-Mejia's pleas, the State agreed to make a global sentencing recommendation of five years of initial confinement, with the period of extended supervision to be left to the court's discretion. The defense was free to argue.

The circuit court conducted a standard plea colloquy, inquiring into Vanegas-Mejia'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; and ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Vanegas-Mejia understood that it would not be bound by any

sentencing recommendations. The court also ascertained that Vanegas-Mejia understood the deportation consequences of his pleas. In addition, Vanegas-Mejia provided the court with a signed plea questionnaire. He 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). The court went over the facts in the complaint with Vanegas-Mejia, who confirmed that those facts were true and correct. Defense counsel confirmed that a factual basis existed for the pleas.

Vanegas-Mejia stated that he was satisfied with his counsel's representation, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Vanegas-Mejia has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

There also would be no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. 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 reflects that the court considered the standard sentencing factors and explained their application to this case, noting in particular the substantial amount of cocaine and money found on Vanegas-Mejia's person and in his residence. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197.

Vanegas-Mejia faced a total maximum prison term of twenty-seven years, three months of initial confinement and seventeen years of extended supervision. *See* WIS. STAT. §§ 961.42(2) (classifying maintaining a drug trafficking place as a Class I felony); 961.41(1m)(cm)4 (classifying possession of more than 40 grams of cocaine with intent to deliver as a Class C felony); 946.41(1) (classifying resisting an officer as a Class A misdemeanor). *See also* WIS. STAT. §§ 973.01(2)(b)9 and (d)6 (providing maximum terms of one and one-half years of initial confinement and two years of extended supervision for a Class I 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); 939.51(3)(a) (providing maximum imprisonment term of nine months for a Class A misdemeanor). The court imposed one and one-half years of initial confinement and two years of extended supervision on the count of maintaining a drug trafficking place, to be served concurrently with a sentence of six years of initial confinement and six years of extended supervision on the count of possession with intent to deliver. The court also sentenced Vanegas-Mejia to nine months in the House of Corrections for resisting an officer, to be served consecutive to the other sentences. We are satisfied that the sentences imposed here, which were "'well within the limits of the maximum sentence'" were not unduly harsh nor "'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 (quoted sources omitted).

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 Holzman is relieved of any further representation of Osmar Vanegas-Mejia in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals