



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

May 3, 2016

To:

Hon. Jill N. Falstad
Circuit Court Judge
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403-5554

Kenneth J. Heimerman
District Attorney
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403-5554

Shirley Lang
Clerk of Circuit Court
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Susan E. Alesia
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Robert B. Carey 349638
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2016AP93-CRNM State of Wisconsin v. Robert B. Carey (L. C. #2014CF763)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Robert Carey filed a no-merit report concluding there is no arguable basis for Carey to withdraw his no contest plea or challenge the sentence imposed for attempted armed robbery/threat of force. Carey was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged Carey with attempted armed robbery/threat of force with use of a dangerous weapon and misdemeanor battery. According to the complaint, the victim was

walking with her twin two-year-old sons when Carey came up behind her, threw her to the ground and threatened her with a knife. The victim screamed and kicked, causing Carey to run away. The victim flagged down a passerby who called the police. Carey was stopped a short time later in the area. After the officer read Carey his *Miranda*¹ rights, Carey told police he pulled the knife and demanded money, intending to rob the woman. He informed an officer where the knife could be located in a wooded area, and it was later found there. The victim also subsequently identified Carey as her assailant in a photo lineup.

Pursuant to a plea agreement, the State dismissed and read in the misdemeanor battery charge in return for Carey's no contest plea to the attempted robbery charge. The court accepted the plea and sentenced Carey to ten years' initial confinement and seven years' extended supervision.

The record discloses no arguable manifest injustice upon which Carey could withdraw his no contest plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form with an attachment listing the elements of the offense, informed Carey of the potential penalties associated with the offense, and the constitutional rights he waived by pleading no contest. The court established Carey was forty years old, had completed the tenth grade, could read and write, took no medication or alcohol within twenty-four hours of the plea, and understood the proceeding. Carey told the court no one threatened him or offered any promises other than the plea agreement. As required by *State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

N.W.2d 14, the court informed Carey it was not bound by the parties' sentence recommendations. The court also informed Carey of other consequences of the plea, including the prohibition against possessing firearms, loss of his right to vote, and the deportation warning required by *State v. Douangmala*, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1. The complaint and its attached police reports served as the factual basis for the plea. The record shows the plea was knowingly, voluntarily, and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentence. The court could have imposed a sentence of twelve and one-half years' initial confinement and seven and one-half years' extended supervision, which was recommended by the State. The court appropriately considered the serious nature of the crime; Carey's lengthy criminal record since 1997; the fact that he had previously been placed on probation, which was revoked; his admitted drug use; the escalating violence of his crimes; the profound impact this crime had on his victim and her children; and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors and the seventeen-year sentence is not arguably so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of her obligation to further represent Carey in this matter. WIS. STAT. RULE 809.32(3) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals