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DISTRICT II

November 30, 2016

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

2016AP1154-CRNM	State of Wisconsin v. Kenneth G. Stoffel (L.C. #2015CF25)
2016AP1156-CRNM	State of Wisconsin v. Kenneth G. Stoffel (L.C. #2015CF117)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Kenneth G. Stoffel appeals from judgments convicting him of possession of narcotic drugs, attempted misdemeanor theft, and felony bail jumping. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Stoffel has not exercised his right to file a response. Upon consideration of the

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

report and an independent review of the record, we summarily affirm the judgments as there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

These consolidated appeals arise from two Washington County Circuit Court cases. Stoffel was charged in 15CF25 with possession of drug paraphernalia and dispensing a prescribed drug. He had given a woman Adderall pills that had been prescribed to him. The next day, Stoffel's father found him unresponsive and pulseless; a syringe, a syringe plunger, and a metal tin were nearby. Police seized the items Stoffel's father found and other items suspected of use in preparing drugs for injection. Testing on the metal tin revealed the presence of heroin. An amended complaint alleged a third count, possession of narcotic drugs. After trying to return shoplifted items to a Walgreens for cash, Stoffel was charged in 15CF117 with attempted misdemeanor theft and felony bail jumping.

Stoffel entered guilty pleas to possession of narcotic drugs in 15CF25 and both charges in 15CF117. Counts one and two in 15CF25 were dismissed and read in, as were all nine charges in two other Washington County cases: 15CF81 (battery, disorderly conduct, possession of drug paraphernalia, misdemeanor bail jumping, and felony bail jumping) and 15CM162 (possession of an illegally obtained prescription, misdemeanor bail jumping, and two counts of possession of a controlled substance).² The court imposed a global prison sentence of three and one-half years' initial confinement and five years' extended supervision. This no-merit appeal followed.

² The plea hearing and sentencing transcripts and the 15CF25 Wisconsin State Prison Disposition Form all indicate that the charges in 15CM162 were dismissed and read in. CCAP indicates those charges were dismissed on the prosecutor's motion.

The no-merit report first considers whether Stoffel’s pleas were knowingly, intelligently, and voluntarily entered. A defendant seeking to withdraw a guilty plea after sentencing bears “the heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice.” *State v. McCallum*, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). A defendant can meet this burden by showing that the plea was not knowingly, intelligently, and voluntarily entered. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906.

The court’s colloquy, augmented by Stoffel’s signed plea questionnaire/waiver-of-rights form (“the form”), advised Stoffel of the potential penalties and that pleading guilty waived the constitutional rights listed on the form. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30-32, 317 Wis. 2d 161, 765 N.W.2d 794. Stoffel initialed the relevant elements of the offenses on sheets attached to the form. The court found that an adequate factual basis supported the pleas. It advised him it was not bound by any recommendations and could impose the maximum penalties, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and that read-ins can enhance the penalty. Stoffel assured the court that he had sufficient time to consider his decision to plead. He could not raise a meritorious claim that his pleas were not knowingly, voluntarily, and intelligently entered. *See* WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986); *Brown*, 293 Wis. 2d 594, ¶35.³

³ The court failed to provide the immigration warning WIS. STAT. § 971.08(1)(c) mandates. To obtain plea withdrawal under § 971.08(2), however, a defendant must be able to show that the court failed to provide the immigration warning and that “the plea is likely to result in the defendant’s deportation.” *See State v. Douangmala*, 2002 WI 62, ¶25, 253 Wis. 2d 173, 646 N.W.2d 1. The record reveals nothing that would support the second prong of such a claim.

The report also examines whether Stoffel could raise an arguable challenge to his sentence. The record reveals that the court considered the seriousness of the offenses, Stoffel's character and rehabilitation needs, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984). It noted that the attempted theft was not especially serious by itself, but it was to get cash for drugs and he was on bond at the time. The court said Stoffel's drug and alcohol addictions made his recent life a "train wreck." With the read-ins and an uncharged disorderly conduct incident at the jail, the charges overall were "very severe" and made the court leery of Stoffel's success in the community. It found that the public needs protection from both heroin and the criminal behavior too often associated with its use. It considered Stoffel's positives—his youth, employment record, and supportive family—but noted that he presented with significant negatives as well—his heroin addiction, criminal history, and refusal of treatment. It fully explained on the record the rationale of the sentence it fashioned and why probation or concurrent sentences would depreciate the seriousness of the situation. *See State v. Gallion*, 2004 WI 42, ¶¶38-40, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence is not so excessive, unusual, or disproportionate to the offense committed as to shock public sentiment. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no basis on which to disturb it.

Our review of the record discloses no further potential issues for appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Colleen Marion is relieved of further representing Stoffel in this matter. WIS. STAT. § 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals