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March 7, 2017

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

2015AP1842-CRNM State of Wisconsin v. Scott D. Cline (L.C. # 2011CF51)

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

Scott Cline appeals a criminal judgment convicting him of aggravated battery. Attorney S. Joseph Randtke has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2015-16);[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 Cline's plea and sentence.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Cline 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, 266-72, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Cline entered a no-contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Cline's plea, the State agreed to recommend a withheld sentence conditioned on three years of probation with conditional jail time.

The circuit court conducted a standard plea colloquy, inquiring into Cline's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Cline'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, Cline provided the court with a signed plea questionnaire. The court's colloquy included acknowledgement that the wrong jury instruction had been attached to the plea questionnaire, and the court emphasized the proper elements of the charged offense. Cline indicated to the court that he had gone over the plea questionnaire line by line with counsel, and

he is not now claiming to have misunderstood any information on that form, or the actual elements of the offense. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Cline stipulated to the court that there was a sufficient factual basis for the plea. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Cline has not alleged any other facts that would give rise to a manifest injustice. Therefore, Cline's plea was valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Cline'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).

The record shows that Cline was afforded an opportunity to comment on the PSI and to address the 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 offense, the court noted that the victim had needed stitches and was doubtless afraid of Cline and of being out in public after the incident. With respect to Cline's character, the court went through Cline's criminal history and poor work history, but also noted that Cline had done well on probation in the past. The court concluded that the 206 days Cline had spent in jail awaiting

sentencing would be sufficient punishment, in conjunction with the deterrent effect of an imposed and stayed sentence.

The court then sentenced Cline to thirty months of initial confinement and thirty months of extended supervision, but stayed the prison sentence subject to a three-year term of probation. The court imposed 206 days in jail as a condition of probation, but gave Cline sentence credit resulting in time served. The court also ordered $1,646.85 in restitution.

The term of probation, conditional jail time, and components of the stayed bifurcated sentence were within the applicable penalty ranges. *See* WIS. STAT. §§ 940.19(6) (classifying aggravated battery as a Class H felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony); 973.09(2)(b)1. (setting term of probation for a felony at not less than one year and not more than the greater of three years or the initial period of confinement); 973.09(4)(a) (allowing up to one year of jail as a condition of probation). There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentence imposed and stayed 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." *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoting another source).

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 and postconviction order 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