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DISTRICT IV

February 23, 2018

To:

Hon. J. David Rice
Reserve Judge

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

2017AP278-CRNM State of Wisconsin v. Jeremy David Miller (L.C. # 2015CF358)

Before Sherman, Kloppenburg and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jeremy Miller appeals a judgment convicting him of eluding an officer in a motor vehicle. Attorney Frederick Bechtold 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

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

N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses Miller's plea and sentence. Miller 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 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Miller entered a no contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Miller's plea on the eluding charge, as well as on two traffic citations with forfeiture amounts of $213.10 and $515.50, the State agreed to dismiss and read in a felony charge of reckless endangerment; to dismiss outright five additional traffic citations, to order a PSI, and to cap the State's sentence recommendation at three years of probation with nine months of conditional jail time.

The circuit court conducted a plea colloquy, inquiring into Miller's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Miller'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. The court

made sure Miller understood that it would not be bound by any sentencing recommendations. In addition, Miller provided the court with a signed plea questionnaire with attached jury instructions. Miller indicated to the court that he had gone over the form with his attorney and understood the information on it, and he is not now claiming otherwise. *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 which Miller advised the circuit court that he did not dispute—namely, that after a traffic officer with a laser gun clocked Miller speeding on a motorcycle and the officer activated his siren and squad car lights to stop him, Miller accelerated, made multiple turns and ran through multiple stop signs rather than pull over—provided a sufficient factual basis for the plea. Miller indicated that he had sufficient time to discuss his case with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Miller has not alleged any other facts that would give rise to a manifest injustice. Therefore, Miller'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 Miller'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 Miller was afforded an opportunity to comment on the PSI, to present an alternate PSI, and to address the circuit 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 Miller had endangered lives by leading police on a high speed chase up to 119 mph. With respect to Miller's character, the court noted that the reason Miller gave for fleeing—to avoid getting in trouble for operating without a license—was selfish and reckless, and that his failure to cooperate with the PSI author and his lengthy criminal history demonstrated a disregard for the law and following the rules. The court acknowledged that Miller had an abusive childhood, but noted that he had reached a stage where he needed to take responsibility for his own actions. The court identified the primary goals for sentencing in this case as protecting the public from Miller's dangerous conduct and indifferent attitude toward it and punishment to get the message through to Miller that his behavior would not be tolerated.

The circuit court then withheld sentence and imposed a three-year term of probation, with a condition of seven months in jail, all but the first sixty days of which could be served with work release privileges. The court imposed standard costs and conditions of supervision, and subsequently awarded thirty-one days of sentence credit.

The term of probation and amount of conditional jail time were authorized by statute. *See* WIS. STAT. §§ 346.04(3) and 346.17(3)(a) (classifying eluding an officer as a Class I felony); 973.01(2)(b)9. and (d)6. (providing maximum terms of one and a half years of initial confinement and two years of extended supervision for a Class I 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 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 (quoted source omitted). That is particularly true when taking into consideration the amount of additional sentence exposure Miller avoided on the read-in offense, and that the PSI agent had recommended a prison term.

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.

Accordingly,

IT IS ORDERED that the judgment of conviction is 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).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals