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February 6, 2018

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

2016AP2191-CRNM State v. Oscar J. Edmonson, Jr. (L. C. No. 2015CF532)

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

Counsel for Oscar Edmonson, Jr., has filed a no-merit report concluding there is no basis to challenge Edmonson's conviction for armed robbery with threat of use of a weapon, as a repeater. Edmonson was advised of his right to respond and has failed to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

A criminal complaint alleged Edmonson took money from a cash register after threatening to kill a Dollar Store employee while having his hand in his pocket in a manner suggesting he had a weapon. It also alleged he had been convicted of three armed robberies thirteen years earlier and had been incarcerated for eleven of those years.¹ An Information charged one count of armed robbery with threat of force, as a repeater. Edmonson pleaded no contest to the charge, and another armed robbery in Kenosha County case No. 2015CF533 was dismissed and read in. The circuit court imposed a sentence of twelve years' initial confinement and ten years' extended supervision. The court subsequently denied a postconviction motion for sentence modification, in which Edmonson alleged the fifteen-year reconfinement sentence he ultimately received upon revocation of extended supervision in the three prior robbery convictions constituted a new factor justifying a reduction in his sentence.

There is no manifest injustice upon which Edmonson could withdraw his plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, together with the plea questionnaire and waiver of rights form, with attachments, informed Edmonson of the constitutional rights he waived by pleading, the elements of the offense, and the potential punishment. The court specifically advised Edmonson it was not bound by the parties' agreement and could impose the maximum penalty. The court failed to

¹ The conviction for the three robberies also resulted in twenty-five years' extended supervision on each count, concurrently. Edmonson completed the initial confinement portion of his sentence and was released, but his extended supervision was revoked upon his arrest for the armed robberies in this case and Kenosha County case No. 2015CF533.

advise Edmonson of the potential deportation consequences of his plea as required by WIS. STAT. § 971.08(1)(c) (2015-16).² However, the no-merit report represents to this court that Edmonson could not show he is likely to be deported, and Edmonson did not respond. Therefore, no arguable issue arises from the court's failure in this regard. The complaint provided a sufficient factual basis supporting the conviction. The plea was knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no-contest or guilty plea constitutes a waiver of nonjurisdictional defenses and defects. *Id.* at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. The court considered the proper factors, including Edmonson's character, the seriousness of the offenses, and the need to protect the public. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court emphasized Edmonson's significant criminal history and long history of addiction to crack cocaine. The court also noted the read-in offense was another robbery. The court stated, "[Y]ou need money to get drugs. ... So [in] both of these situations you terrorized the cashiers. They believed they were in imminent danger, including danger of death." The court appropriately concluded the seriousness of the offenses required a significant period of incarceration. Edmonson faced forty-six years' imprisonment. The sentence imposed was far less than the maximum and thus presumptively neither harsh nor

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

excessive. *See State v Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.³

The no-merit report addresses the circuit court’s denial of Edmonson’s motion for postconviction relief. Edmonson insisted his agreement to waive the reconfinement hearing and accept the recommendation for a fifteen-year sentence on the revocation of extended supervision constituted a new factor justifying sentence modification. The circuit court held that it was not a new factor. As the court noted at the postconviction motion hearing, it “did not structure its sentence in such a fashion that the term of his either initial confinement or the term of his extended supervision was in any way, shape or form dependent upon what kind of sentence that he got at reconfinement.” The court stated, “My intention was to impose a term in prison that I believe reflected the sentencing factors, regardless of the fact that there was a reconfinement process going on.” Furthermore, the court was specifically advised at the sentencing hearing that the revocation hearing was scheduled for the following day and the recommendation was fifteen years, which is exactly what Edmonson received upon waiving the reconfinement hearing. The court properly explained its reason for concluding that the facts Edmonson presented postconviction were not a new factor and did not justify a sentence modification. There is no arguable merit to any argument justifying sentence modification. *See State v. Harbor*, 2011 WI 28, ¶66, 333 Wis. 2d 53, 797 N.W.2d 828.

³ We note the circuit court referenced the COMPAS risk assessment at sentencing. However, the record shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, (continued)

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

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Andrew Hinkel is relieved of further representing Edmonson in this matter. WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Acting Clerk of Court of Appeals

¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.