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DISTRICT II

July 2, 2025

To:

Hon. J. Arthur Melvin III
Circuit Court Judge
Electronic Notice

John Blimling
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Jason C. Mocnik #238116
Fox Lake Correctional Institution
W10237 Lake Emily Road
Fox Lake, WI 53933

Donald C. Dudley
Electronic Notice

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

| | |
|-----------------|---|
| 2024AP2317-CRNM | State of Wisconsin v. Jason C. Mocnik (L.C. #2023CF576) |
| 2024AP2318-CRNM | State of Wisconsin v. Jason C. Mocnik (L.C. #2023CF598) |

Before Neubauer, Grogan, and Lazar, 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).

Jason C. Mocnik appeals from judgments convicting him of four counts of felony retail theft in these consolidated cases. Attorney Donald C. Dudley has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of the plea and the circuit court's exercise of sentencing discretion. Mocnik was sent a copy of the report and

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

advised of his right to file a response. He has not done so. Upon reviewing the entire record and the no-merit report, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

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, 272-78, 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.

Mocnik entered guilty pleas to four counts of felony retail theft in two cases. Several other charges from those two cases and three other criminal cases were dismissed and read in. The circuit court conducted a standard plea colloquy, inquiring into Mocnik's ability to understand the proceedings and the voluntariness of his plea decision and further exploring his understanding of the nature of the charges, the penalty range, other direct consequences of the pleas, and the constitutional rights being waived. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Mocnik understood that it would not be bound by any sentencing recommendations, although its sentence ultimately did comport with the recommendations. In addition, Mocnik provided the court with a signed plea questionnaire for each case. Mocnik indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Mocnik’s counsel stated on the record that there was a factual basis for the pleas, and there is nothing in the record or the no-merit report that leads us to conclude otherwise. Mocnik told the circuit court that he was satisfied with trial counsel’s representation of him, and nothing in our independent review of the record would support a claim that trial counsel rendered ineffective assistance. Mocnik has not alleged that the prosecutor failed to abide by the plea agreement or any other facts that would give rise to a manifest injustice. Therefore, the pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offenses, Mocnik’s character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶13, 40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Mocnik had the opportunity to address the court directly, and did so prior to the court’s imposition of sentence. The court imposed an aggregate sentence of three and one-half years of initial confinement and three and one-half years of extended supervision, which was half of the maximum time provided by the statutes. The court did not impose any fines, though the statutes also provide a maximum of \$40,000 in fines for Mocnik’s convictions. “A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983); *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Donald C. Dudley is relieved from further representing Jason C. Mocnik in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals