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January 26, 2015

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

2013AP1372-CRNM State of Wisconsin v. Sharrod Lapreal Guthrie-Bey
(L.C. # 2011CF358)

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

Sharrod Guthrie-Bey appeals a judgment that convicted him of delivering less than one gram of cocaine, based upon a series of controlled drug buys made under police surveillance. Attorney Daniel Chapman has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967);

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

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 Guthrie-Bey's plea and the circuit court's exercise of its sentencing discretion. Guthrie-Bey 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, 288-90, 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.

Guthrie-Bey entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Guthrie-Bey's plea, the State agreed to dismiss and read-in two other charges. The plea agreement reduced Guthrie-Bey's sentence exposure by twenty years.

The circuit court conducted a standard plea colloquy, inquiring into Guthrie-Bey's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring Guthrie-Bey's understanding of the nature of the charges, the penalty ranges and other direct consequences of the plea, 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 Guthrie-Bey understood that it would not be bound by any sentencing recommendations. In addition, Guthrie-Bey provided the court with a signed plea

questionnaire. Guthrie-Bey 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).

The defense stipulated that there was a factual basis for the plea, and the facts alleged in the complaint support that stipulation. Prior to the plea, trial counsel filed a successful suppression motion excluding a confidential informant's identification of Guthrie-Bey, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Guthrie-Bey has not alleged any other facts that would give rise to a manifest injustice. Therefore, Guthrie-Bey's plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling—which, we have just noted, was favorable to Guthrie-Bey. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Guthrie-Bey'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 Guthrie-Bey 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. The court viewed the offense as moderately serious, in that it involved cocaine rather than marijuana and was a fourth drug conviction, but was not a violent offense. With respect to character, the court noted that

Guthrie-Bey was not "some evil individual that's out plotting to do the next crime while still in prison," but rather the product of a difficult childhood, early exposure to the drug trade from family members, and addictions, which to some degree mitigated his behavior. The court also gave Guthrie-Bey credit for taking responsibility for his actions, and felt he was sincere in wanting to change his lifestyle, but was concerned about his ability to do so, given his track record and obstacles to gaining lawful employment. Given Guthrie-Bey's criminal history, and his failure to change his behavior as the result of prior prison terms, the court concluded that the only way to protect the public from his drug-dealing was to incarcerate him again. The court explained that imposing a sentence longer than the last sentence Guthrie-Bey had served was a matter of individual deterrence.

The court then sentenced Guthrie-Bey to five years of initial confinement and four years of extended supervision. The court also awarded 281 days of sentence credit, imposed standard costs and conditions of supervision, and determined that Guthrie-Bey was eligible for the challenge incarceration and substance abuse programs.

The sentence was within the applicable penalty range. *See* WIS. STAT. § 961.41(1)(cm)1g. (classifying delivery of less than one gram of cocaine as a Class G felony) and WIS. STAT. § 973.01(2)(b)7. and (d)4. (providing maximum terms of five years of initial confinement and five years of extended supervision for a Class G felony). Although the sentence was near the maximum, it 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 it right and proper under the circumstances," given Guthrie-Bey's criminal history. ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507

(citation omitted). That is particularly true when taking into consideration the amount of additional sentence exposure Guthrie-Bey avoided on the read-in offenses.

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 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).

Diane M. Fremgen
Clerk of Court of Appeals