

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 95-1557-CR-NM
95-1558-CR-NM

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL R. DELAO,

Defendant-Appellant.

APPEAL from judgments of the circuit court for La Crosse County: DENNIS G. MONTABON, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Pursuant to a plea agreement, Michael R. DeLao pled guilty to several counts arising from drug trafficking. Additional charges were dismissed and read-in for sentencing.

In the case underlying appeal no. 95-1557-CR-NM, DeLao was convicted of one count of unlawful delivery of a noncontrolled substance for which he received a prison sentence of ten years. He was also convicted of one count of unlawful delivery of marijuana and one count of possession of marijuana with intent to deliver. Consecutive five-year prison terms were imposed and stayed for both counts. DeLao was ordered to serve six years on probation, consecutive to the prison sentence, and to make restitution of the "buy money." Additionally, DeLao was convicted of a second count of unlawful delivery of a noncontrolled substance, one count of unlawful delivery of cocaine, and one count of bail jumping. He was ordered to serve concurrent five-year prison sentences for these charges. The minimum \$1000 fine was imposed for each drug charge. DeLao received 218 days of credit for presentence incarceration against the ten-year sentence.

Additionally, in the case underlying appeal no. 95-1558-CR-NM, DeLao was convicted of one count of maintaining a dwelling for warehousing a controlled substance, and he received a concurrent two-year prison sentence. DeLao received ninety days of credit against this sentence.

The state public defender appointed Attorney Joseph J. Skemp, Jr. to represent DeLao on appeal. Attorney Skemp has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). DeLao received a copy of the no merit report and was advised of his right to file a response. He has not responded.

Responding to neighbors' complaints of possible drug activities, police targeted DeLao's residence for surveillance. Based upon these complaints, the results of their surveillance activities, and a confidential, reliable informant's report of purchasing drugs from DeLao, the police obtained and executed a search warrant of the premises. They found drug paraphernalia, small plastic baggies of marijuana, marijuana cigarettes, and \$660 in cash. The warehousing-of-drugs charge in appeal no. 95-1558-CR-NM resulted from this search.

DeLao was arrested. He was unable to make bail, and he remained in jail for ninety days. Subsequently, he agreed to cooperate with

authorities and was released on a personal recognizance bond. The charges in appeal no. 95-1557-CR-NM were the result of several controlled buys made by a confidential police informant from DeLao after DeLao was released from jail.

The no merit report addresses whether plea counsel provided DeLao with ineffective assistance of counsel; whether DeLao's guilty pleas were knowingly, intelligently, and voluntarily entered; and whether the motion to modify sentence, either based on a new factor or an erroneous exercise of discretion, would be frivolous. Attorney Skemp concludes that these possible issues have no arguable merit. Based upon our independent review of the record, we conclude that his analysis of these issues is correct. There is nothing in the record to suggest that trial counsel's performance was deficient. To establish a claim of ineffective assistance of counsel, a defendant must show that trial counsel's performance was deficient as well as prejudicial. *State v. Brooks*, 124 Wis.2d 349, 352, 369 N.W.2d 183, 184 (Ct. App. 1985). Our review of the record does not disclose any areas where counsel's performance may have been deficient. DeLao's only claim, that he felt pressured to agree to the plea negotiations, was waived when he abandoned his pre-sentence motion to withdraw his plea.

To assure that a plea is knowingly, voluntarily, and intelligently entered, the trial court is obligated by § 971.08(1)(a), STATS., to determine that a defendant understands the nature of the charges to which he or she is pleading, the potential punishment for those charges, and the constitutional rights being relinquished by entering a guilty plea. See *State v. Bangert*, 131 Wis.2d 246, 260-62, 389 N.W.2d 12, 20-21 (1986). The plea colloquy between DeLao and the trial court satisfied this standard. Additionally, the court concluded that an adequate factual basis existed for finding DeLao guilty of the charges. See § 971.08(1)(b).

Finally, sentencing is within the trial court's discretion, *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987), and the court is presumed to have acted reasonably, *State v. Haskins*, 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The defendant bears the burden of showing, from the record, that a sentence is unreasonable. *Id.* Here, the trial court considered the primary factors, *i.e.*, the gravity of the offense, the character of the offender, and the need to protect the public. See *Larsen*, 141 Wis.2d at 427,

415 N.W.2d at 541. The court did not erroneously exercise its discretion. Additionally, no new factors have been presented by DeLao.

A guilty plea waives nonjurisdictional defects arising prior to entry of the plea. See *Bangert*, 131 Wis.2d at 293, 389 N.W.2d at 34. Although an exception exists for review of orders denying motions to suppress evidence, see § 971.31(1), STATS., the motion to suppress evidence obtained under the search warrant was properly denied.

Our independent review of the record does not disclose any additional potential issues for appeal. Any further proceedings on DeLao's behalf would be frivolous and without arguable merit within the meaning of *Anders* and RULE 809.32(1), STATS. Accordingly, the judgments of conviction are affirmed, and Attorney Skemp is relieved of any further representation of DeLao on this appeal.

By the Court. – Judgments affirmed.