



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

August 19, 2013

To:

Hon. Carl Ashley
Circuit Court Judge
Safety Building Courtroom, # 620
821 W. State Street
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

John Richard Breffelh
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4105

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Randall E. Paulson
Asst. State Public Defender
735 N. Water St., #912
Milwaukee, WI 53202-4116

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Tremayne D. Edwards 408030
Wisconsin Secure Program Facility
P.O. Box 9900
Boscobel, WI 53805-9900

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

2011AP2080-CRNM State of Wisconsin v. Tremayne D. Edwards (L.C. # 2008CF3161)

Before Lundsten, Higginbotham and Sherman, JJ.

Tremayne Edwards appeals a judgment convicting him of second-degree reckless homicide, contrary to WIS. STAT. § 940.06(1) (2011-12),¹ and sentencing him to fourteen years of imprisonment and six years of extended supervision. Attorney Randall Paulson has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v.*

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

California, 386 U.S. 738, 744 (1967); *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 the plea and sentence. In response to this court's orders dated October 30, 2012 and March 11, 2013, counsel submitted supplemental reports. Edwards was sent a copy of each of the reports, but has not filed any response. Upon reviewing the entire record, as well as counsel's reports, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

First, Edwards does not have an arguable basis for withdrawing his guilty plea. A plea may be withdrawn after sentencing only when the defendant can demonstrate by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice such as evidence that the plea was coerced, uninformed, or unsupported by a factual basis, that counsel provided ineffective assistance, or that the prosecutor failed to fulfill the plea agreement. *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.

In January 2009, Edwards pled guilty to second-degree reckless homicide, contrary to WIS. STAT. § 940.06(1). After entry of the plea, but before sentencing, Edwards wrote a letter to the court indicating that he wished to withdraw his plea. However, at a hearing in March 2009, at which Edwards was present with his trial counsel, Edwards told the court that he no longer wished to withdraw his plea. When the court asked him if he was satisfied with his decision not to request plea withdrawal, Edwards replied, "Yes, Your Honor. I'm very sure. I'm sure."

The circuit court conducted a plea colloquy that explored with Edwards his understanding of the charge against him, the penalties he faced, and the constitutional rights he would be

waiving. See WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Counsel asserts in the no-merit report that the court did not expressly inform Edwards during the plea colloquy that the court was not bound to follow any plea recommendations and could impose the maximum term. A plea questionnaire and waiver of rights form signed by Edwards did state that the court was not bound by any plea agreement, and correctly noted the maximum penalties. A supplemental report submitted by Edwards' counsel to this court in February 2013 states that, prior to filing the no-merit report, counsel investigated the issue of plea withdrawal with Edwards and is unaware of any basis to allege that Edwards did not understand that the court was not bound by any plea agreement. We are satisfied that the no-merit report, along with counsel's supplemental reports, properly analyzes the plea withdrawal issue it raises as being without merit. There is nothing in the record to suggest that counsel's performance was deficient. Thus, Edwards' plea was valid and operated to waive all non-jurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Edwards' sentences also would lack arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Edwards was sentenced in June 2009, but then filed a motion for resentencing, which was granted. At the resentencing hearing held in August 2010, Edwards was afforded the opportunity to address the court prior to sentencing, and he did so. The court considered the standard sentencing factors on the record, including the gravity of the offense, Edwards' character, his prior criminal record, and the safety needs of the community.

The court sentenced Edwards to fourteen years of initial confinement and six years of extended supervision. The sentence imposed was within the applicable penalty range. *See* WIS. STAT. § 940.06(1) (classifying second-degree reckless homicide as a class D felony); § 973.01(2)(b)4. and (d)3. (maximum term for class D felony is fifteen years of confinement and ten years of extended supervision). We agree with counsel that the sentence was not unduly harsh, and not “so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoting another source).

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 WIS. STAT. RULE 809.32 and *Anders*.

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Randall Paulson is relieved of any further representation of Tremayne Edwards in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals