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DISTRICT IV

September 9, 2013

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

2012AP2090-CRNM State of Wisconsin v. Ryan T. Wehinger (L.C. #2010CM522)
2012AP2091-CRNM State of Wisconsin v. Ryan T. Wehinger (L.C. #2010CT1626)

Before Kloppenburg, J.[1]

Ryan Wehinger appeals two misdemeanor judgments convicting him of resisting an officer and a second offense of operating a motor vehicle while intoxicated (OWI-2nd). Attorney Steven Philips has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex***

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

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 Wehinger's pleas and sentences. Wehinger 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, the convictions were based upon the entry of guilty pleas, and 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, 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, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

On the resisting an officer charge, the State agreed to have the court withhold adjudication and refer the matter to the First Offender's program in exchange for Wehinger's plea. On the OWI-2nd charge, the State agreed to make a joint sentencing recommendation of twenty days in jail plus a sixteen month license revocation, ignition interlock, an AODA assessment, and costs and fees, in exchange for the plea. In each case, Wehinger submitted a signed plea questionnaire. He indicated to the court that he went over the forms with counsel and understood all of the information explained on them, 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 circuit court also conducted a brief plea colloquy in each case, inquiring into Wehinger's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Wehinger's understanding of the nature of the charges, the penalty ranges, and other direct

consequences of the pleas, 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 facts set forth in the respective probable cause affidavits and complaints provided a sufficient factual basis for the pleas, and Wehinger admitted his prior OWI conviction in open court. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Wehinger has not alleged any other facts that would give rise to a manifest injustice. Therefore, Wehinger's pleas were valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Wehinger's sentences would also lack arguable merit. The circuit court followed the joint recommendation of the parties and sentenced Wehinger to thirty days on the resisting an officer offense and twenty days on the OWI-2nd offense. With sentence credit, those sentences resulted in time served. A defendant may not challenge on appeal a sentence that he affirmatively approved. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments 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 judgments of conviction are 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