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DISTRICT IV

September 13, 2013

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

2012AP1809-CRNM State of Wisconsin v. Jamall M. Amin (L.C. #2010CF94)

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

Jamall Amin appeals a criminal judgment convicting him of substantial battery, false imprisonment, battery, and two counts of intimidation of a victim, all as a repeat offender, and an order denying his postconviction motion for sentence modification. Attorney Susan Alesia 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) and ***State ex rel. McCoy v.***

[1] All further references in this order to the Wisconsin Statutes are to the 2011-12 version, unless otherwise noted.

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 pleas and sentences. Amin 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 no-contest pleas, and we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must, at a minimum, 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.

The State agreed to dismiss and read in four other charges as part of the pleas. The circuit court conducted a plea colloquy exploring Amin'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 court made sure Amin understood that it would not be bound by any sentencing recommendations. The court also inquired into Amin's ability to understand the proceedings and the voluntariness of the plea decision. In addition, the record includes a signed plea questionnaire with attached jury instructions. Amin 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).

A female victim and a male victim testified at the preliminary hearing that a highly intoxicated Amin attacked the female victim when she came to his apartment, and when the male victim attempted to intervene, Amin beat the male victim for an extended period of time and broke a beer bottle over his head. Amin made repeated threats of death throughout the incident at first to prevent the female victim from leaving, and then to compel her to go with him to Walgreens, where he again attacked her, repeatedly banging her head against the concrete floor. The defense stipulated that the facts set forth in the complaint and produced at the preliminary hearing provided a sufficient factual basis for the pleas.

There is nothing in the record to suggest that counsel's performance was in any way deficient, and Amin has not alleged any other facts that would give rise to a manifest injustice. Therefore, Amin'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 Amin's sentences would also lack arguable merit. Our review of a sentence 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). Here, the record shows that Amin was afforded an opportunity to comment on the presentence investigation report and 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. Regarding the severity of the offenses, the court noted that the male victim had suffered traumatic brain injury and needed to relearn how to walk, and that, in addition to the pain of her beating and fear from the death threats, the female victim also had to endure the humiliation of

being partially stripped in front of other people in Walgreens. With respect to Amin's character, the court acknowledged that Amin had longstanding mental health problems, but noted that he had failed to take advantage of multiple opportunities to deal with his problems through interactions with the criminal justice system after prior episodes of criminally violent behavior, and that his level of violence appeared to be escalating. The court concluded that a prison term was necessary to protect the public, and that it should be a more lengthy term than prior sentences that had been imposed for more minor offenses.

The court then sentenced Amin to four years of initial confinement and one year of extended supervision on the substantial battery count; two years of initial incarceration and two years of extended supervision on the false imprisonment count; one and a half years of initial confinement and six months of extended supervision on the misdemeanor battery count; and four years of initial incarceration and four years of extended supervision on each of the counts of intimidating a victim. The counts were all concurrent, except for the second intimidation of a victim count, which was consecutive. The court also awarded 370 days of sentence credit; ordered restitution in the amount of $290; imposed standard costs and conditions of supervision; directed Amin to provide a DNA sample; and determined that Amin was not eligible for the challenge incarceration program, the earned release program, or a risk reduction sentence.

The components of the bifurcated sentences imposed were within the applicable penalty ranges, and the total imprisonment period, taking into account the concurrent sentences, constituted about 31% of the maximum exposure Amin faced. *See* WIS. STAT. §§ 940.45(1) (classifying intimidation of a victim by use or threat of force as a Class G felony); 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); 939.62(1)(c) (increasing maximum term of

imprisonment for offense otherwise punishable by more than ten years by six additional years for habitual criminality); 940.30 (classifying false imprisonment as a Class H felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony); 940.19(2) (classifying substantial battery with intent to cause bodily harm as a Class I felony); 973.01(2)(b)9. and (d)6. (providing maximum terms of one and a half years of initial confinement and two years of extended supervision for a Class I felony); 939.62(1)(b) (increasing maximum term of imprisonment for offense otherwise punishable by one to ten years by four additional years for habitual criminality); 940.19(1) (classifying battery as a Class A misdemeanor); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 939.62(1)(a) (increasing maximum term of imprisonment for offense otherwise punishable by less than one year to two years for habitual criminality); and 973.01(2)(c) (enlarging maximum initial incarceration period by the same amount as the total term of imprisonment based upon a penalty enhancer).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentences imposed here were 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 is right and proper under the circumstances," given the severity of injuries to the victims. ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (internal quotation marks and quoted sources omitted).

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 and order denying Amin's postconviction motion 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