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DISTRICT III

October 15, 2013

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

2013AP961-CRNM State of Wisconsin v. Arnold Andero David (L. C. #2010CF44)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Arnold David filed a no-merit report concluding there is no arguable basis for David to withdraw his no contest plea or challenge the sentence imposed for first-degree reckless injury. David was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint and amended complaint charged David with numerous crimes arising out of an incident in which he stabbed his girlfriend four times with a knife and a fork. Pursuant to a

plea agreement, David entered a no contest plea to a single count of first-degree reckless injury and the remaining charges were dismissed. The plea agreement required the district attorney to recommend a sentence no greater than that recommended in the presentence investigation report. The court accepted the plea and imposed a sentence of eight years' initial confinement and four years' extended supervision.

The record discloses no manifest injustice upon which David could withdraw his no contest plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form, established the plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). As required by *State v. Hampton*, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed David it was not bound by the parties' plea agreement. The court reviewed the elements of the offense, which were also contained in the jury instructions appended to the plea questionnaire. The court also informed David of the possible penalties the court could impose, the constitutional rights he waived by pleading no contest and his likely deportation based on this conviction.

David's nationality is Micronesian, and English is his second language. David's counsel stated he had no trouble communicating with his client as long as he took his time, carefully explained what they were discussing and avoided use of any jargon or complicated words. He had gone over the plea questionnaire five days before the plea hearing so they would not be rushed, and he again met with David the day before the plea hearing to go over the questionnaire. David confirmed he understood the elements, potential penalties and constitutional rights, and that his answers on the plea questionnaire were accurate. David personally stipulated that the allegations in the complaint could be used as the factual basis for the plea.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court appropriately considered the seriousness of the offense and David's character, including the fact he was on probation for domestic violence when this incident occurred as well as David's serious drinking problem. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court also considered the need to protect the public and the amount of confinement needed to effectuate alcohol treatment for David. The court indicated it imposed a "somewhat lighter" term of extended supervision based on the likelihood of David's deportation following completion of his prison sentence. The sentence was consecutive to David's other sentences and the court properly awarded 147 days of jail credit against this sentence for the time David's incarceration was based solely on this case. The court considered no improper factors and the sentence is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of his obligation to further represent David in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals