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DISTRICT III

October 15, 2013

To:

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

2013AP1406-CRNM State of Wisconsin v. Joshua J. Maufort (L.C. # 2011CF1162)

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

Counsel for Joshua Maufort has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),¹ concluding no grounds exist to challenge Maufort's conviction for party to the crime of battery with an intent to cause great bodily harm, contrary to WIS. STAT. §§ 940.19(4) and 939.05. Maufort was informed of his right to file a response to the no-merit 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 merit to any issue

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

that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Maufort with party to the crime of battery with the intent to cause great bodily harm, by use of a dangerous weapon, as a repeater. In exchange for his no contest plea to the crime charged, the State agreed to dismiss the repeater and weapon enhancers. The court imposed the maximum six-year sentence, consisting of three years' initial confinement and three years' extended supervision.

The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Maufort completed, informed Maufort of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no contest plea. The court confirmed Maufort's understanding that it was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also found that a sufficient factual basis existed in the criminal complaint to support Maufort's plea. The record shows the plea was knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Upon our independent review of the record, this court discovered that the circuit court failed to personally advise Maufort of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). A potential issue would arise if Maufort could show that the plea is likely to result in his "deportation, exclusion from admission to this country or denial of naturalization." *See* WIS. STAT. § 971.08(2); *see also State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. The record reveals, however, that Maufort is a citizen of the United

States not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit.

The record discloses no arguable basis for challenging the sentence imposed. The court considered the seriousness of the offense, describing the battery as “vicious,” noting that “[t]aking a baseball bat to a human being, striking him in the head on multiple occasions, and breaking his orbital bone are serious matters.” Before imposing a sentence authorized by law, the court also considered Maufort’s character, including his criminal history; the need to protect the public; and the mitigating factors Maufort raised. *See State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that Maufort’s sentence is 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 issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Angela D. Dirden is relieved of further representing Maufort in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals