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DISTRICT III

December 3, 2013

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

2013AP1329-CRNM State of Wisconsin v. Russell E. Klemstein, Jr. (L.C. # 2012CF339)

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

Counsel for Russell E. Klemstein, Jr., has filed a no-merit report concluding there is no arguable basis for Klemstein to withdraw his no contest plea or challenge the sentence imposed for a sex offender registry violation. Klemstein 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.

Klemstein was required to register as a sex offender by virtue of a 1995 conviction for second-degree sexual assault. He reported an address change on April 5, 2012, to the Sex

Offender Registration Program indicating that he was living at 1510 East College Avenue, Appleton, Wisconsin. Klemstein confirmed that address on April 17, 2012. On April 13, 2012, he was arrested for criminal damage to property at that address and, on April 16, was released on signature bond with the condition that he provide written notice to the clerk of court of any change of address or phone number. He signed the signature bond, reporting the same address. On April 24, officers contacted the occupant at that address, who told them Klemstein did not live there. Officers were informed that Klemstein had been reporting to the Day Report Center that his current address was 10 Mathias Court, Appleton, Wisconsin. Police were unable to verify that Klemstein lived at that address. The complaint alleged Klemstein failed to notify the Sex Offender Registry Program of his address change between April 13 and April 25, 2012.

At the request of Klemstein's attorney, the court ordered a competency examination. The initial examination was inconclusive because of Klemstein's failure to cooperate. The court then ordered an inpatient examination. Doctor Erik Knudson concluded Klemstein was able to understand the proceedings and participate in his defense. Klemstein's attorney did not contest that report. The record does not suggest any basis for challenging Klemstein's competency.

The record does not disclose any arguable manifest injustice upon which Klemstein could withdraw his no contest pleas. *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 that the plea was knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Klemstein was high-school educated; had no difficulty reading, writing or understanding English; and had not taken any drugs or alcohol within twenty-four hours of the plea hearing. The court explained the elements of the offense from the jury instructions that were also attached to the plea questionnaire. The

court informed Klemstein of the maximum penalties and that it was not bound by the parties' sentence recommendations. See *State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. The court also reviewed the constitutional rights Klemstein waived by pleading no contest. The court followed the procedures for accepting a no contest plea set out in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *Bangert*, 131 Wis. 2d at 293.

The record also discloses no arguable basis for challenging the sentence of two years' initial confinement and one year extended supervision. The maximum sentence the court could have imposed was six years' imprisonment and a \$10,000 fine. The court appropriately considered the seriousness of the offense, Klemstein's character and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). It found Klemstein a danger to the public because he refused mental health treatment and his refusal to take medications led to dangerous behavior that made him an unsuitable candidate for probation. As conditions of Klemstein's extended supervision, the court reasonably required him to complete any treatment, counseling evaluations, programs and assessments required by the Department of Corrections and maintain absolute sobriety. Finally, the court awarded Klemstein 245 days' sentence credit, reflecting the time Klemstein was in custody from the date of his arrest until he was sentenced.

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 Tristan Breedlove is relieved of her obligation to further represent Klemstein in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals