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DISTRICT III

December 17, 2013

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

2013AP2196-CRNM State of Wisconsin v. Christopher J. Smith (L. C. # 2012CF159)

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

Counsel for Christopher Smith has filed a no-merit report concluding no grounds exist to challenge Smith's conviction for armed robbery by use of force. Smith 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 that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2011-12).¹

The State charged Smith with armed robbery by use of force, possession of a firearm by a felon, kidnapping and false imprisonment, the latter two charges by use of a dangerous weapon. Smith filed a pretrial motion to suppress evidence. Before the motion was decided, he entered into a plea agreement.² In exchange for his no contest plea to armed robbery by use of force, the State agreed to dismiss and read in the remaining charges. Both sides remained free to argue the sentence. Out of a maximum possible forty-year sentence, the court imposed a fourteen-year sentence consisting of seven years' initial confinement and seven years' extended supervision, to run consecutively to a sentence Smith was serving in a Winnebago County case.

The record discloses no arguable basis for withdrawing Smith's no contest plea. The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Smith completed, informed Smith 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 Smith'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 advised Smith of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). Additionally, the court found that a sufficient factual basis existed in the criminal complaint to

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

² WISCONSIN STAT. § 971.31(10) provides that an order denying a motion to suppress evidence may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest. Because Smith's suppression motion was never decided, the statute is inapplicable and we need not address any claim arising from the motion.

support the conclusion that Smith committed the crime charged. 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).

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Smith's character, including his criminal history; the need to protect the public; and the mitigating factors Smith 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 Smith'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 issue 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 Timothy T. O'Connell is relieved of further representing Smith in this matter. *See WIS. STAT. RULE 809.32(3)*.

Diane M. Fremgen
Clerk of Court of Appeals