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

2012AP1667-CRNM State of Wisconsin v. Clancy Louis Jacobs (L.C. #2008CF5889)

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

Clancy Jacobs appeals a judgment convicting him of robbery with use of force as a party to the crime. He also appeals an order denying his postconviction motion for sentence modification. Attorney John Wasielewski has filed a no-merit report seeking to withdraw as

appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. 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 Jacobs' plea and sentence. Jacobs 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, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, 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. *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Jacobs entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Jacobs' plea, the State agreed to reduce the count of conviction from armed robbery to robbery with use of force, to dismiss and read in a count of felon in possession of a firearm, and to read in two additional uncharged counts of felony intimidation of a witness. The State followed through on its agreement. The plea agreement reduced Jacobs' sentence exposure by fifty-five years.

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

The circuit court conducted a standard plea colloquy, inquiring into Jacobs' ability to understand the proceedings and the voluntariness of his plea decision, and further exploring Jacobs' understanding of the nature of the charge, the penalty ranges and other direct consequences of the plea, 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 Jacobs understood that the court would not be bound by any sentencing recommendations. In addition, Jacobs provided the court with a signed plea questionnaire. Jacobs 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).

The facts set forth in the complaint, which Jacobs acknowledged to be true—namely, that he had stood by the door of a bank holding a rifle and shouting threats while his cousin demanded money from a teller—provided a sufficient factual basis for the plea. Jacobs indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Jacobs has not alleged any other facts that would give rise to a manifest injustice. Therefore, Jacobs' plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10). Since Jacobs prevailed on his suppression motion prior to a trial that ended in a mistrial, he was already aware that the State's case against him would not include his statement to police.

A challenge to Jacobs' sentence would also lack arguable merit. Our review of a sentencing 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. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Jacobs was afforded an opportunity to address the court, both personally and through counsel, and to present two character witnesses. 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 & nn.9-12, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court considered the robbery aggravated because Jacobs targeted a bank, where money is supposed to be secure; Jacobs not only wielded a rifle, but threatened to kill people with it; and he made off with a considerable amount of money. With respect to character, the court noted that Jacobs had escalated his criminal behavior by committing the current offense less than a month after being released on probation for a less-serious felony, and while subject to a ban on firearms. In conjunction with Jacobs' diagnosed antisocial personality disorder, the court believed there was a higher than average risk that Jacobs would reoffend.

The court then sentenced Jacobs to ten years of initial confinement and three years of extended supervision, to be served consecutive to any other sentence. The court also awarded 167 days of sentence credit, ordered restitution in the amount stipulated to by the parties, and imposed standard costs and conditions of supervision to be paid out of prison wages. The court determined that Jacobs would not be eligible for the challenge incarceration program, the earned release program, or a risk reduction sentence because it would reduce the punishment that the court intended, which the court identified as the primary purpose of the sentence.

The components of the bifurcated sentence were within the applicable penalty ranges, and the total imprisonment period constituted about 87% of the maximum exposure Jacobs faced. *See* WIS. STAT. §§ 943.32(1)(a) (classifying robbery by use of force as a Class E felony); 973.01(2)(b)5. and (d)4. (providing maximum terms of ten years of initial confinement and five years of extended supervision for a Class E felony) (2007-08 Stats.). Additionally, the sentence imposed here was 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.'" *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted). That is particularly true when taking into consideration the amount of additional sentence exposure Jacobs avoided on the read-in offenses.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction or the order denying postconviction relief. *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 the order denying postconviction relief are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney John Wasielewski is relieved of any further representation of Clancy Jacobs in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals