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DISTRICT III

April 15, 2014

To:

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

2013AP2838-CRNM State v. Tyler K. J. Klempke (L. C. No. 2012CF188)

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

Counsel for Tyler Klempke has filed a no-merit report concluding there is no basis to challenge Klempke's convictions for burglary. Klempke was advised of his right to respond 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 and summarily affirm.

Klempke was charged with three counts of burglary of a building or dwelling; two counts of misdemeanor theft; two counts of misdemeanor criminal damage to property; and four counts of theft of movable property, all counts as party to a crime. Klempke pleaded no contest to two

counts of burglary. The four counts of theft of movable property were dismissed outright and the remaining counts were dismissed and read in. The court imposed a sentence consisting of four years' initial confinement and five years' extended supervision.

There is no manifest injustice upon which Klempke could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, together with the plea questionnaire and waiver of rights form, informed Klempke of the constitutional rights he waived by pleading, the elements of the offenses and the potential penalty. Klempke conceded a factual basis supported the conviction. The court specifically advised Klempke it was not bound by the parties' agreement and could impose the maximum penalty. The court also advised Klempke of the potential deportation consequences of the pleas. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered Klempke's character, the seriousness of the offenses and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court imposed a sentence authorized by law and neither harsh nor excessive.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

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

IT IS FURTHER ORDER that attorney Leonard Kachinsky is relieved of further representing Klempke in this matter.

*Diane M. Fremgen
Clerk of Court of Appeals*