OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

April 11, 2014

To:

Hon. Todd P. Wolf
Circuit Court Judge, Br. 3
Wood County Courthouse
400 Market St
Wisconsin Rapids, WI 54494

Cindy Joosten
Clerk of Circuit Court
Wood County Courthouse
P.O. Box 8095
Wisconsin Rapids, WI 54494

Craig S. Lambert
District Attorney
P. O. Box 8095
Wisconsin Rapids, WI 54494-8095

William E. Schmaal
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Gary P. Verkilen
104 W. Cleveland Street, Apt. 2W
Marshfield, WI 54449

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

2013AP1001-CRNM State of Wisconsin v. Gary P. Verkilen (L.C. # 2011CF138)
2013AP1002-CRNM State of Wisconsin v. Gary P. Verkilen (L.C. # 2011CF509)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Attorney William Schmaal, appointed counsel for Gary Verkilen, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Verkilen's guilty pleas or the court's sentencing. Verkilen was sent a copy of the report, but has not filed a response. Upon independently

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

reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Verkilen was charged with operating while intoxicated, fifth offense, and operating with a prohibited alcohol concentration, fifth offense. Verkilen was released on a cash bond, but the court issued a warrant for Verkilen's arrest after Verkilen failed to appear for a scheduled hearing. Verkilen was then charged with two counts bail-jumping and one count obstructing an officer based on Verkilen's actions during police execution of the arrest warrant. Pursuant to a global plea agreement, Verkilen pled guilty to operating with a prohibited alcohol concentration, fifth offense, and obstructing an officer. The operating while intoxicated charge was dismissed, and the bail-jumping charges were dismissed but read-in.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Verkilen's guilty pleas. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Verkilen and determine information such as Verkilen's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Verkilen's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Verkilen's sentence. The sentence followed the recommendation under the joint plea agreement, except that it imposed a fine lower than the fine stated in the plea agreement as to the prohibited alcohol concentration conviction. Because Verkilen received the sentence he approved, he is barred from challenging the sentence on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 517-18, 451 N.W.2d 759 (Ct. App. 1989). Additionally, the court granted Verkilen 250 days of sentence credit, on counsel's stipulation. We discern no arguable merit as to any claims arising from the court's sentencing.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Schmaal is relieved of any further representation of Verkilen in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals