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DISTRICT II

April 30, 2014

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

2013AP2213-CRNM State of Wisconsin v. Orlando Carradine (L.C. #2012CF1315)

Before Brown, C.J., Reilly and Gundrum, JJ.

Orlando Carradine appeals a judgment convicting him of possession with intent to deliver (PWITD) heroin as a repeat drug offender. Carradine's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Carradine filed a response. Upon consideration of the report, the response, and our independent review of the record as mandated by ***Anders*** and RULE 809.32, we conclude that we

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

may dispose of this appeal summarily. *See* WIS. STAT. RULE 809.21. We affirm the judgment and relieve Attorney Daniel P. Murray of further representing Carradine in this matter.

Originally charged with PWITD heroin and with possession of THC, both charged as second and subsequent offenses and as a repeater, Carradine entered a guilty plea to PWITD heroin, second and subsequent, but without the repeater enhancer. The THC count was dismissed and read in for sentencing. The circuit court sentenced him to four years' initial confinement and three years' extended supervision consecutive to the revocation sentence he currently was serving. This no-merit appeal followed.

The no-merit report addresses whether an issue of arguable merit could arise from the entry of Carradine's guilty plea. Carradine contends in his response that his plea was not knowingly, intelligently, and voluntarily entered because the court failed to (1) enumerate the elements of the charge to which he pled, (2) explain the potential punishment he faced, and (3) inform him of the constitutional rights that he waived.

WISCONSIN STAT. § 971.08 obligates the circuit court to ensure that a plea is knowingly, voluntarily, and intelligently entered by ascertaining that the defendant understands the essential elements of the charge to which he or she is pleading, the potential punishment for the charge, and the constitutional rights being given up. ***State v. Bangert***, 131 Wis. 2d 246, 260-262, 389 N.W.2d 12, 20-21 (1986). A defendant seeking to withdraw a guilty plea after sentencing bears "the heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice." ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). The defendant must make a prima facie case that the circuit court did not comply with the procedural requirements of § 971.08, and that he or she did not understand or

know the information that should have been provided. *See* ***Bangert***, 131 Wis. 2d at 274. If he or she does so, the State must show by clear and convincing evidence that the plea nonetheless was knowing, voluntary, and intelligent. ***Id.*** at 275.

No issue of arguable merit could arise from this point. The colloquy was adequate, if not elaborate. Besides the colloquy, the court properly looked to Carradine's signed plea questionnaire/waiver of rights form, expressing his understanding of the elements of the crime, the potential penalties, and the rights he agreed to waive. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. The elements were spelled out on a separate sheet attached to the plea questionnaire. Under questioning by the court, Carradine orally reiterated his understanding. He indicated no hesitation, confusion, or lack of clarity. He also confirmed his understanding that the court was not bound by any sentencing recommendation. Moreover, Carradine has been through this before. He entered a no-contest plea to delivery of cocaine in 1993 and a guilty plea to possession of THC in 2011, for which he was on probation at the time of this offense. His unadorned claim that he "did not know or understand information that should have been provided at the plea hearing" falls short of making a prima facie case. See ***State v. James Brown***, 2006 WI 100, ¶67, 293 Wis. 2d 594, 716 N.W.2d 906 (defendant must identify with some particularity what he or she did not understand and connect that lack of understanding to the alleged deficiencies in the plea colloquy). Carradine also does not claim, and we discern no basis for such a claim, that he was denied the effective assistance of counsel leading up to and during the plea taking so as to establish a manifest injustice. *See* ***State v. Rock***, 92 Wis. 2d 554, 558-59, 285 N.W.2d 739 (1979).

The no-merit report also considers whether the circuit court properly exercised its discretion at sentencing. Like an original sentencing, sentencing after revocation is reviewed

under an erroneous exercise of discretion standard. *See* ***State v. John Brown***, 2006 WI 131, ¶20, 298 Wis. 2d 37, 725 N.W.2d 262. To properly exercise its discretion, the court must provide a rational and explainable basis for the sentence. ***State v. Gallion***, 2004 WI 42, ¶39, 270 Wis. 2d 535, 678 N.W.2d 197. It "must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. The court also should consider the defendant's conduct on probation. ***John Brown***, 298 Wis. 2d 37, ¶34.

No basis exists to disturb the sentence imposed. The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough and rational explanation for imposing the sentence it did. The court also took into account Carradine's health problems, noted Carradine's own recognition that his drug issues could be better addressed in a controlled setting than on the street, and explained why it ordered the sentence to run consecutively rather than concurrently.

We also assess whether Carradine's seven-year sentence is unduly harsh. Presumptively it is not, as it is well within the limits of the sixteen and a half years' imprisonment and $25,000 fine that he faced. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. It also actually is not because its length is not so excessive, unusual, and so disproportionate to his offense as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court explained the importance of protecting the community from heroin and addressing Carradine's own drug issues. Our independent review reveals no other meritorious issues.

For the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel P. Murray is relieved of any further representation of Carradine on this appeal.

Diane M. Fremgen
Clerk of Court of Appeals