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DISTRICT III

May 20, 2014

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

2013AP2389-CRNM State of Wisconsin v. Michael J. Swetlik (L.C. # 2012CF141)

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

Counsel for Michael Swetlik filed a no-merit report concluding there is no arguable basis for Swetlik to withdraw his guilty plea or challenge the sentence imposed for failing to notify the sex offender registry of his change of residence. Swetlik filed two responses detailing mental health issues, particularly gender identity disorder, and arguing for a reduced sentence. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

Swetlik was charged with failure to notify the sex offender registry of his change of address as a repeat offender. Pursuant to a plea agreement, the State dropped the repeater allegation and Swetlik entered a guilty plea. The court sentenced Swetlik to two and one-half years' initial confinement and three years' extended supervision, consecutive to another sentence he was serving at the time.

The record discloses no arguable manifest injustice upon which Swetlik could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form, informed Swetlik of the elements of the offense, the potential penalties and the constitutional rights he waived by pleading guilty. As required by *State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Swetlik it was not bound by the sentence recommendations. The court also informed Swetlik of the possibility of deportation, his loss of voting rights and the prohibition against possessing a firearm. The court inquired about Swetlik's mental health issues, and Swetlik told the court about his various diagnoses as well as the psychotropic medications he was taking. He told the court that nothing about his medications made it difficult to understand what was happening. He also assured the court that no one threatened force or made any promises in order to induce him to plead guilty. The record shows the plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentencing court's discretion. There is a strong public policy against interfering with the court's discretion, and a presumption that the sentencing court acted reasonably. *State v. Echols*, 175 Wis. 2d 653,

681-82, 499 N.W.2d 631 (1993). The court could have imposed a sentence of three years' initial confinement and three years' extended supervision. The court appropriately considered the serious nature of the offense, noting Swetlik's whereabouts were unknown for some time and he was apprehended in Wyoming. The court also considered Swetlik's character, including his criminal history, particularly periods of supervision that had been revoked. It also considered his significant mental health history and need for treatment in a confined setting. Finally, the court appropriately considered the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984); *State v. Fisher*, 2005 WI App 175, ¶20, 285 Wis. 2d 433, 702 N.W.2d 56. Although the sentence was substantially longer than the parties' recommendations, it does not constitute an improper exercise of the court's discretion. The weight to be given the various factors lies within the court's discretion.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Michelle Velasquez is relieved of her obligation to further represent Swetlik in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals