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DISTRICT II

July 9, 2014

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

2014AP472-CRNM State of Wisconsin v. Tronick D. Massey (L.C. #2012CF315)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Tronick Massey appeals a judgment of conviction and an order denying his motion for postconviction relief. Massey's appellate counsel has filed a thorough no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Massey

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

was served with a copy of the no-merit report but has not filed a response to it.[2] Based upon the report and our independent review of the record as required by ***Anders*** and RULE 809.32, we conclude that no issue of arguable merit could be raised on appeal. We affirm the judgment and the order, accept the no-merit report, and relieve Attorney Donna Odrzywolski of further representing Massey in this matter.

Massey and two armed accomplices robbed a gas station/convenience store. He pled no contest to armed robbery as party to a crime and as a repeater; a charge of misdemeanor bail jumping was dismissed outright. He received a sentence of seven years' initial confinement and five years' extended supervision to be served consecutive to the revocation sentence imposed due to this offense. Postconviction, Massey asserted that evidence of his rehabilitation and educational progress while incarcerated warranted sentence modification. *See* ***State v. Ninham***, 2011 WI 33, ¶88, 333 Wis. 2d 335, 797 N.W.2d 451 (a circuit court has inherent authority to modify a sentence). The motion was denied. This no-merit appeal followed.

The no-merit report first addresses whether any meritorious challenge could be made to the validity of Massey's plea. We agree that none could. A defendant seeking to withdraw a guilty or no-contest 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). WISCONSIN STAT. § 971.08

[2] Upon being served with a copy of the no-merit report and notice that he had thirty days to respond to it, Massey filed what this court construed as a motion for miscellaneous relief. Massey requested that we not accept the no-merit report on grounds that he had retained private counsel, Attorney Denise Hertz-McGrath, to represent him on this appeal. Attorney Hertz-McGrath advised this court, however, that she was not retained by Massey and does not represent him. This court took no action on Massey's motion.

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). 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 the defendant does so, the State must provide 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 record confirms that the circuit court met each requirement. Besides a complete colloquy, the court properly looked to the plea questionnaire/waiver of rights form Massey signed. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. Massey confirmed that his counsel had read the form to him and answered all of his questions and that he understood the elements of the crime (spelled out on a separate sheet attached to the plea questionnaire), the potential penalties, the rights he agreed to waive, and that the court was not bound by any sentencing recommendation. Massey indicated no hesitation, confusion, or lack of clarity. Further, Massey received the concessions contemplated by the plea agreement.

The no-merit report further considers whether Massey could 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). Massey has not filed a response to the no-merit report by which he might have identified some way that defense counsel's representation was both deficient and prejudicial. *See* ***Strickland v.***

Washington, 466 U.S. 668, 687 (1984). Our review of the record dovetails with appellate counsel's assessment that no arguably meritorious issue could be raised.

The report also analyzes a potential claim that the court erroneously exercised its discretion at sentencing. We agree with counsel's conclusion that the sentence reflects a proper exercise of discretion and was not unduly harsh.

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. *See* ***State v. Gallion***, 2004 WI 42, ¶39, 270 Wis. 2d 535, 678 N.W.2d 197. It noted that, while Massey did not wield a gun in the heist, he planned and directed it, and that he seemed not to perceive the seriousness of his offense and the toll such behavior takes on communities. *See* ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. It noted his prompt disregard of the rules of probation, *see* ***State v. Brown***, 2006 WI 131, ¶34, 298 Wis. 2d 37, 725 N.W.2d 262, and concluded that protection of the public was the most important factor, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Massey's twelve-year total sentence, well less than the forty-six years he faced, presumptively is not unduly harsh. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. The court recognized that this would be nineteen-year-old Massey's first time in prison and balanced that against how his criminal behavior was escalating in violence and severity. The term imposed is 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." ***Ocanas***, 70 Wis. 2d at 185. No basis exists to disturb the sentence imposed.

Our independent review reveals no other potentially meritorious issues.

For the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Donna Odrzywolski is relieved of further representing Massey in this matter.

Diane M. Fremgen
Clerk of Court of Appeals