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 I/IV

July 15, 2014

To:

Hon. Mary E. Triggiano
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Road
Wauwatosa, WI 53226-1425

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Paul G. Bonneson
Law Offices of Paul G. Bonneson
631 N. Mayfair Rd.
Wauwatosa, WI 53226

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Kalvin Perry 385352
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2012AP2535-CRNM State of Wisconsin v. Kalvin Perry (L.C. #2011CF3026)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Kalvin Perry appeals a judgment convicting him, after entry of a guilty plea, of two counts of child abuse, contrary to WIS. STAT. § 948.03(2)(c) (2011-12).[1] Attorney Paul Bonneson has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429

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

(1988). The no-merit report addresses the validity of the plea and sentence. Perry was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 255, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Perry was originally charged with two counts of physical abuse of a child with intentional causation of great bodily harm, a class C felony. The State then amended the information, pursuant to a plea agreement, and reduced the charges to two counts of physical abuse of a child with a high probability of great bodily harm, a class F felony. Perry agreed to plead guilty to the amended charges and the State agreed to request a presentence investigation report (PSI) and to recommend five years of initial confinement and five years of extended supervision on each count, to run consecutive to each other and any sentence currently being served. At the plea hearing, the terms of the negotiated plea agreement were presented in open court.

The circuit court conducted a standard plea colloquy with Perry, inquiring into his ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v.***

Hoppe, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Perry understood that it would not be bound by any sentencing recommendations. In addition, Perry provided the court with a signed plea questionnaire. Perry indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The facts in the amended information—namely, that Perry hit his two minor children, K.A.P. and K.B.P. in the face—provided a sufficient factual basis for the plea.

There is nothing in the record to suggest that counsel's performance was in any way deficient, and we are not aware of any other facts that would give rise to a manifest injustice. Therefore, Perry's plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Perry's sentence would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record shows that Perry was afforded an opportunity to comment on the PSI and to address the court, both personally and through counsel. The court considered the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court emphasized the seriousness of the offenses and concluded that a prison term was necessary to protect the public.

The court then sentenced Perry to five years of initial confinement and five years of extended supervision on count one and four years of initial confinement and four years of extended supervision on count two, to be served consecutive to each other and consecutive to the revocation sentence he was serving. The judgment of conviction reflects that the court determined that Perry was not eligible for the Challenge Incarceration Program, the Earned Release Program, or a risk reduction sentence. The court waived the DNA surcharge and did not award any sentence credit.

The components of the bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 948.03(2)(c) (classifying physical abuse of a child/high probability of great bodily harm as a Class F felony); 973.01(2)(b)6m and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony). There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentences imposed here were not "so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Paul Bonneson is relieved of any further representation of Kalvin Perry in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals