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**DISTRICT III**

August 12, 2014

To:

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

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2013AP1928-CRNM      State of Wisconsin v. Mark J. Helsel (L. C. No. 2012CF644)

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

Counsel for Mark Helsel has filed a no-merit report concluding there is no basis to challenge Helsel's conviction for burglary as party to a crime. Helsel was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised and summarily affirm.

Helsel was charged with two burglaries of a residence in which entrance was initially gained through a broken bedroom window. Helsel and another individual allegedly stole a coin

jar, an Xbox 360 and other items. Fingerprints at the scene identified the co-defendant who implicated Helsel. In exchange for his plea to one count of burglary as a party to a crime, the other charge was dismissed and read in. The circuit court imposed eighteen months' initial confinement and two years' extended supervision, consecutive to other sentences Helsel was serving.

There is no manifest injustice upon which Helsel could withdraw his plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Helsel of the elements of the offense, the constitutional rights he waived and the potential penalty.<sup>1</sup> The court specifically advised Helsel that it was not bound by the parties' agreement and could impose the maximum penalty. The court also advised Helsel of potential deportation consequences as required. An adequate factual basis supported the conviction. The record shows the plea was knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

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<sup>1</sup> The circuit court did not fully explain the elements of the offense during the plea colloquy. However, during the colloquy the court emphasized that the Wisconsin jury instructions for burglary and party to a crime were attached to the plea questionnaire and waiver of rights form. Helsel represented in open court at the plea hearing that he reviewed the jury instructions with counsel and understood them. In addition, the circuit court did not fully discuss during the colloquy the constitutional rights Helsel waived, but Helsel confirmed that "by entering your plea here today, you are giving up all of these Constitutional rights that you checked on the front of the form under the heading Constitutional rights?" Helsel's counsel also represents in the no-merit report that after discussing these issues with Helsel, it could not be represented in good faith that Helsel did not understand the elements or the constitutional rights he waived. Helsel did not respond to the no-merit report and the issues are therefore conceded.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered Helsel's character, the seriousness of the offense and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The sentence imposed was far less than the twelve years' six months' imprisonment Helsel faced, and therefore presumptively neither harsh nor excessive. *See State v. Grindemann* 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

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

IT IS FURTHER ORDERED that attorney Timothy O'Connell is relieved of further representing Helsel in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*