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DISTRICT III

November 4, 2014

To:

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

2013AP1357-CRNM State of Wisconsin v. James J. Andres
2013AP1358-CRNM (L. C. ##2011CF826, 2012CF88, 2012CF273, 2012CF491)
2013AP1359-CRNM
2013AP1360-CRNM

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

Counsel for James Andres has filed a no-merit report concluding there is no basis to challenge Andres' convictions for falsely presenting a noncontrolled substance, as a party to a crime, in case No. 2013AP1357; misdemeanor battery in case No. 2013AP1358; telephone harassment, as a repeater, in case No. 2013AP1359; and bail jumping in case No. 2013AP1360. Andres 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 on appeal and summarily affirm.

In exchange for his no contest pleas globally resolving these cases, various other charges and uncharged files were dismissed and read in. There is no manifest injustice upon which Andres could withdraw his pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's extensive colloquy, together with the plea questionnaire and waiver of rights form, informed Andres of the constitutional rights he waived by pleading no contest, the elements of the offenses, the potential penalties and the deportation consequences. The court specifically advised Andres that it was not bound by the parties' agreement and could impose the maximum penalties. An adequate factual basis supported the convictions. The record shows the pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of valid no contest pleas constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered the proper factors, including Andres' character, the seriousness of the offenses and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court referenced Andres' lengthy criminal and juvenile history, and stated Andres had "been kind of a terror ... for a long time." The court also emphasized "the COMPAS evaluation indicates high risk and high probability of further criminal activity in almost all categories." The court imposed concurrent sentences consisting of the following: eighteen months' initial confinement and two years' extended supervision in case No. 2013AP1357; eight months' jail in case No. 2013AP1358; one year initial confinement and one year extended

supervision in case No. 2013AP1359; and two years' initial confinement and three years' extended supervision in case No. 2013AP1360. The sentences were allowable by law and not unduly harsh or excessive. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

IT IS ORDERED that the judgments are summarily affirmed. *See WIS. STAT. RULE 809.21 (2011-12)*.

IT IS FURTHER ORDERED that attorney John Bachman is relieved of further representing Andres in these matters.

Diane M. Fremgen
Clerk of Court of Appeals