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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 III

January 6, 2015

To:

Hon. Michael Moran
Circuit Court Judge
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Diane L. Sennholz
Clerk of Circuit Court
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Kenneth J. Heimerman
District Attorney
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403-5554

Ralph Sczygelski
Sczygelski & Pangburn Law Firm, LLC
713 Washington St.
Manitowoc, WI 54220-4525

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

Nickolis C. Hays 492307
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2014AP585-CRNM	State of Wisconsin v. Nickolis C. Hays
2014AP586-CRNM	(L. C. Nos. 2011CF845, 2011CF905, 2012CF103)
2014AP587-CRNM	

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

Counsel for Nickolis Hays has filed a no-merit report concluding there is no arguable basis for Hays to withdraw his guilty pleas or challenge the sentences imposed for five drug-related crimes and three counts of bail jumping, all as a repeat offender. Hays was advised of his right to respond to the report 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 basis for appeal.

In three complaints, Hays was charged with fourteen drug-related crimes, thirteen counts of bail jumping and one count of obstructing an officer. Pursuant to a plea agreement, he entered guilty pleas to possession of THC, second and subsequent offense; possession with intent to deliver cocaine, second and subsequent offense; delivery of heroin, second and subsequent offense; two counts of possession of drug paraphernalia and three counts of bail jumping, all as a repeat offender. All of the remaining charges were dismissed and read in for sentencing purposes. The State agreed to cap its sentence recommendation at eleven years' initial confinement and ten years' extended supervision, with the defense free to argue for a lesser sentence. The State also agreed not to bring additional charges for felony intimidation of a witness and an additional count of bailjumping, both as a repeat offender. The court imposed concurrent sentences totaling ten years' initial confinement and ten years' extended supervision.

The record discloses no arguable manifest injustice upon which Hays could withdraw his guilty pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, aided by a Plea Questionnaire and Waiver of Rights form, informed Hays of the constitutional rights he waived by pleading guilty, the elements of the offenses and the potential penalties. Hays acknowledged the prior offenses that support the repeater allegations, and those offenses were separate from the drug offenses that support the second and subsequent offense allegations related to the THC, cocaine and heroin charges. See *State v. Maxey*, 2003 WI App 94, ¶21, 264 Wis. 2d 878, 663 N.W.2d 811. As required by *State v. Hampton*, 2004 WI 117, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Hays it was not bound by the parties' sentence recommendations and could impose the maximum sentences. The criminal complaints and the testimony given at the preliminary hearings serve as a factual basis for the guilty pleas. The record shows the pleas were knowingly, voluntarily and intelligently entered.

See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of valid guilty pleas constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court considered the seriousness of the offenses, Hays' character and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court could have imposed consecutive sentences totaling 119. The court noted Hays was a "pretty big fish" who sold large volumes of heroin and cocaine and had a loaded handgun in his possession to protect his investment. The court considered no improper factors, and the twenty-year sentence is not arguably so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

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

IT IS FURTHER ORDERED that attorney Ralph Sczygelski is relieved of his obligation to further represent Hays in these matters. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals