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DISTRICT I/III

January 13, 2015

To:

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

2014AP603-CRNM State of Wisconsin v. Anthony Lee Hudson (L. C. #2012CF2305)

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

Counsel for Anthony Hudson has filed a no-merit report concluding there is no basis to challenge Hudson's conviction for possession with intent to deliver THC. Hudson 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.

A criminal complaint alleged police stopped Hudson's vehicle after observing a temporary license that was obstructed by a tinted license plate cover. Marijuana was plainly

visible on the center console. Hudson volunteered that the vehicle was his and someone had earlier been smoking marijuana. A subsequent search of the vehicle revealed a shoe box behind the seat containing eight cut-corner baggies of marijuana, a digital scale and an open box of plastic sandwich bags. Hudson also had \$680 cash in his pockets.

There is no basis for challenging the circuit court's denial of a suppression motion. The stop of the vehicle was appropriate. License plates shall at all times be maintained in a legible condition and shall be displayed so they can be readily and distinctly seen and read. WIS. STAT. § 341.15(2). The court found the officer's testimony credible. The rear registration plate was covered with an extremely heavy tinted cover, such that the officer could not read the plate until he was within three feet from it. The marijuana was in plain view and the search of the passenger compartment incident to arrest was proper. See *State v. Smiter*, 2011 WI App 15, ¶¶15-16, 331 Wis. 2d 431, 793 N.W.2d 920. Hudson's voluntary statement that someone had been earlier smoking marijuana in his vehicle was not the result of interrogation and *Miranda*¹ rights were thus not implicated. See *State v. Hambly*, 2008 WI 10, ¶46, 307 Wis. 2d 98, 745 N.W.2d 48.

There is no manifest injustice upon which Hudson may withdraw his guilty plea to the charged crime of possession with intent to deliver THC. 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 Hudson of the constitutional rights he waived by pleading guilty, the elements of the offense, the potential penalty and the potential deportation

¹ Referring to *Miranda v. Arizona*, 384 U.S. 436 (1966).

consequences. The court specifically advised Hudson that it was not bound by the parties' agreement and could impose the maximum penalty. 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 or guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also contains no basis for challenging the court's sentencing discretion. The court considered the proper factors, including Hudson's character, the seriousness of the offense and the need to protect the public. The court noted that "[w]ithin the realm of felonies, it's the lowest level of felony," but emphasized "you haven't even reached 40 years old and you have got seven [prior felony convictions]." The court also noted this offense was committed while Hudson was on extended supervision. The court indicated, "certainly lengthy incarceration would be appropriate. The State, however, is not requesting the lengthy incarceration that could be available in the prison system." The court adopted the State's recommendation of twelve months in the house of corrections straight time and consecutive to any other sentence. The sentence was 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 judgment is summarily affirmed. *See WIS. STAT. RULE 809.21* (2011-12).

IT IS FURTHER ORDERED that attorney Colleen Marion is relieved of further representing Hudson in this matter.

Diane M. Fremgen
Clerk of Court of Appeals