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DISTRICT III

January 21, 2015

To:

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

2014AP388-CRNM State v. Kevin J. Hussey (L. C. No. 2013CF734)

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

Counsel for Kevin Hussey has filed a no-merit report concluding there is no basis to challenge Hussey's convictions for felony bail jumping, substantial battery with intent to cause bodily harm – domestic abuse, and striking a police animal. Hussey 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.

Hussey's girlfriend told police that upon arriving back at their apartment after drinking in several bars, she and Hussey began to argue. Hussey then punched her in the mouth with a closed fist, causing her to fall onto a coffee table and then to the ground. While on the ground, Hussey hit her three more times in the face with a closed fist. Hussey then began to damage items in the apartment. Hussey also slapped her on the face numerous times. She was able to leave the apartment and go to her sister's house after telling Hussey she needed to go outside to find her phone. When police arrived at her sister's house, Hussey's girlfriend was observed holding an ice pack to her face, which was swollen on the right side. She was taken to the hospital with injuries to her head, face, back, legs and arms.

Hussey's girlfriend gave police permission to enter their apartment. When police arrived at the apartment, they discovered nearly every item in the living room and kitchen broken. There was a hole in the wall the size of a fist and police also noticed one of the stove-top burners was on high and glowing red. Hussey was located inside a bedroom but refused to come out and pushed the door shut on the officers. Police gained entry to the bedroom, and Hussey was observed lying on the bed, "with one eye open watching us." Hussey suddenly jumped out of bed, grabbed a police dog that was present with the officers, and started pushing its head forward as if attempting to snap its neck. Hussey also struck the police dog numerous times before officers secured him.

Hussey was charged with felony bail jumping; substantial battery with intent to cause bodily harm – domestic abuse; criminal damage to property – domestic abuse; obstructing an officer; striking a police animal; and disorderly conduct – domestic abuse. Hussey pled no contest to the bail jumping, substantial battery and striking the police animal charges, and the remaining counts were dismissed and read in.

There is no manifest injustice upon which Hussey 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 Hussey 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 Hussey that it was not bound by the parties’ plea agreement. 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.¹ *Id.* at 265-66.

The record also discloses no basis to challenge the court’s sentencing discretion. The court considered the proper sentencing factors, including Hussey’s 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 characterized Hussey’s behavior as “frightening” and “beyond bizarre.” The court stated an obvious need “to protect the public from any human being engaging in this type of behavior to another human being or to a living creature” The sentences imposed of one-year initial confinement and one-year extended supervision on the bail jumping count; eighteen months’ initial confinement and two years’ extended supervision on the substantial battery count; and nine months’ jail on the striking a police animal count, all

¹ We note an earlier case against Hussey, Brown County case No. 2013CF196, was dismissed without prejudice after the plea had been taken but before sentencing because the State discovered it had apparently failed to file an Information. On that same day, and at the same hearing, the matter was re-filed with the present case number, with Hussey’s agreement. Hussey entered a not guilty plea at the initial appearance stage of the re-filed proceedings, and waived a preliminary hearing. The parties maintained the same plea bargain position, the court accepted his plea, and the case proceeded to sentencing. Hussey agreed to the procedure, and any argument that the procedural posture was defective would therefore lack arguable merit.

concurrently, were authorized 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 William Donarski is relieved of further representing Hussey in this matter.

Diane M. Fremgen
Clerk of Court of Appeals