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DISTRICT II

January 28, 2015

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

2014AP1811-CRNM State of Wisconsin v. Angel S. Ynocencio (L.C. #2013CF52)

Before Brown, C.J., Reilly and Gundrum, JJ.

Angel S. Ynocencio appeals a judgment, entered upon his no-contest pleas, convicting him of possession of a firearm by a felon and possession with intent to deliver cocaine (>40 grams). Ynocencio's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Ynocencio was informed of his right to file a response but he has elected not to do so. Upon consideration of the no-merit

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. We therefore affirm the judgment, accept the no-merit report, and relieve Attorney Randall E. Paulson of further representing Ynocencio in this matter.

Police executed a search warrant at Ynocencio's residence. They recovered 79.2 grams of cocaine, a .40-caliber handgun with a loaded magazine, additional ammunition, marijuana, a pipe, a scale, "corner cuts" from baggies, and creatine monohydrate, which can be used to cut cocaine. Ynocencio was charged with possession of a firearm by a felon, possession with intent to deliver cocaine (>40 grams), possession with intent to deliver marijuana, and maintaining a drug house. He entered no-contest pleas to the first two charges; the other two were dismissed and read in. The court sentenced him to a total of eleven years' initial confinement and three years' extended supervision. This no-merit appeal followed.

The no-merit report first addresses whether an issue of arguable merit could arise from the entry of Ynocencio's no-contest pleas. He executed a plea questionnaire and waiver-of-rights form that, along with the court's colloquy, informed him of the constitutional rights he waived by pleading no-contest, the elements of the offense, and the potential sentence.[2] *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. The elements also were spelled out on a separate sheet attached to the plea questionnaire. The court made clear it

[2] The court failed to advise him of the deportation consequences that could befall a noncitizen. *See* WIS. STAT. § 971.08(1)(c). Plea withdrawal can be pursued on that basis, however, only if his plea were likely to result in deportation. *See* ***State v. Douangmala***, 2002 WI 62, ¶23, 253 Wis. 2d 173, 646 N.W.2d 1; *see also* § 971.08(2). All indications are that Ynocencio is a United States citizen.

was not bound by the plea negotiations. Our independent review of the record satisfies us that the plea was knowingly, voluntarily, and intelligently entered under WIS. STAT. § 971.08(1) and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and that no arguable issue could be raised that would satisfy Ynocencio's "heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice," ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997).

The no-merit report also addresses whether the sentence imposed constitutes an erroneous exercise of the court's discretion. Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether that discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We can be satisfied that discretion in fact was exercised when the court provides a "rational and explainable basis" for the sentence it imposes. *See* ***id.***, ¶¶39, 76 (citation omitted). We agree with counsel's assessment that no basis exists to disturb the sentence.

Here, the court examined the gravity of the offense, Ynocencio's 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 "[took] with a grain of salt" Ynocenio's claim that the cocaine was for his personal use and noted the "incredible risk" posed by the mix of drugs, a loaded gun, and children in the home. While it deemed protection of the public to be of greater importance than Ynocencio's rehabilitation, the court still made him eligible for the Wisconsin Substance Abuse Program. The weight to be given the factors is within the court's discretion. ***Cunningham v. State***, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

Considering the potential fifty-four-year sentence, we cannot conclude that the imposed sentence is so excessive or unusual so as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975); *see also* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a rational explanation for imposing the sentences it did. No issue of merit exists from the plea taking or the sentencing, and our review of the record discloses no other potential issues for appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Randall E. Paulson is relieved of further representing Ynocencio in this matter.

Diane M. Fremgen
Clerk of Court of Appeals