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DISTRICT IV

January 22, 2015

To:

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

2013AP1017-CRNM State of Wisconsin v. Kevin D. Brooks (L.C. # 2012CF1153)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Kevin Brooks appeals a judgment convicting him of second-degree sexual assault of an unconscious victim. Attorney Andrew Hinkel filed a no-merit report seeking to withdraw as appellate counsel. He has since been replaced by Steven D. Grunder, who has not withdrawn the report. *See* WIS. STAT. RULE 809.32 (2011-12);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d

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

449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the plea and sentence. Brooks was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Brooks entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Brooks' plea, the State agreed to make a joint recommendation for probation.

Brooks provided the court with a signed plea questionnaire. He indicated to the court that he had gone over the form with counsel, and is not now claiming that he misunderstood any of the information contained therein. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). In addition, the circuit court conducted a brief colloquy to satisfy itself that Brooks was entering his plea knowingly and voluntarily. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72.

The parties stipulated that the facts set forth in the complaint and adduced at the preliminary hearing—namely, that Brooks had intimately touched and taken photographs of an ex-girlfriend while she was asleep—provided a sufficient factual basis for the plea. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Brooks has not alleged any other facts that would give rise to a manifest injustice.

A challenge to Brooks' sentence would also lack arguable merit because the circuit court followed the parties' joint recommendation and withheld sentence subject to a four-year term of probation. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Steven Grunder is relieved of any further representation of Kevin Brooks in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals