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DISTRICT IV

January 26, 2015

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

2013AP1167-CRNM State of Wisconsin v. Ryan T. Wehinger (L.C. # 2011CF1841)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Ryan Wehinger appeals a judgment convicting him of battery to a law enforcement officer. Attorney Stephen Phillips has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of Wehinger's

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

plea and sentence. Wehinger 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. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Wehinger entered a no contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Wehinger's plea, the State agreed to dismiss additional charges in this case and in a separate misdemeanor case.

The circuit court conducted a standard plea colloquy, inquiring into the defendant's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring the defendant's understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72. In addition, Wehinger provided the court with a signed plea questionnaire. Wehinger indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The court took special note of the fact that, while

Wehinger had suffered from some mental health issues in the past, he appeared well prepared at the plea hearing and seemed to recognize "what he's getting into and what he's giving up."

The facts set forth in the complaint—namely, that Wehinger became agitated, started yelling, and then struck a police officer multiple times in the face while the officer was attempting to investigate another incident—provided a sufficient factual basis for the plea. There is nothing in the record to suggest that any of Wehinger's three trial attorneys performed ineffectively, and Wehinger has not alleged any other facts that would give rise to a manifest injustice.

A challenge to Wehinger's sentence would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Wehinger was afforded an opportunity to comment on the PSI, to present character testimony from his mother, and to address the court, both personally and through counsel. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court noted that Wehinger's attack on the officer was vicious and completely unprovoked. With respect to character, the court noted that Wehinger had an extensive juvenile history of disorderly conduct and crimes of violence, and that if he could not take advantage of the resources previously available to him, or conform his conduct to the rules while in custody, he was not ready to do so in society.

Regarding the protection of the public, the court agreed with the COMPAS assessment that Wehinger represented a real risk, not only to others, but to himself, if he could not let go of the past and develop a plan to address his problems.

The court then sentenced Wehinger to three years of initial confinement and two years of extended supervision, and awarded him 456 days of sentence credit. The components of the bifurcated sentence imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 940.20(2) (classifying battery of a peace officer as a Class H felony); 973.01(2)(b)8 and (d)5 (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony). Although the sentence was near the maximum six years allowed, it was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

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 counsel is relieved of any further representation of the defendant in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals