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March 9, 2015

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

2013AP1827-CRNM State of Wisconsin v. Robert W. Stargardt (L.C. # 2012CF26)

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

Robert Stargardt appeals a judgment of conviction entered after he pled guilty to one count of armed burglary as a party to a crime and one count of substantial battery as a party to a crime with use of a dangerous weapon. *See* WIS. STAT. §§ 943.10(1m)(a); 940.19(2); 939.05; 939.63(1) (2009-10).[1] Attorney Dennis Schertz has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *see also* ***Anders v. California***, 386 U.S. 738,

[1] All further references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

744 (1967); ***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 whether Stargardt's plea was freely and voluntarily entered, whether Stargardt received effective assistance of counsel, and whether the circuit court's sentence was excessive. Stargardt 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.

Stargardt entered the pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Stargardt's pleas, the State agreed to dismiss count one of the complaint. The circuit court conducted a standard plea colloquy, inquiring into Stargardt's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Stargardt'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; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Stargardt understood that the court would not be bound by any sentencing recommendations. In addition, Stargardt provided the court with a signed plea questionnaire. Stargardt 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 facts set forth in the complaint—namely, that Stargardt, as a party to a crime, entered a dwelling without consent, with intent to steal, and caused substantial bodily harm to the occupant, while using a dangerous weapon—provided a sufficient factual basis for the pleas.

Regarding any potential argument that Stargardt received ineffective assistance of counsel, the record reflects that Stargardt indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Stargardt has not alleged any other facts that would give rise to a manifest injustice. Therefore, Stargardt's pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Stargardt's sentences 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. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Stargardt was afforded an opportunity to comment on the PSI, and that he did so through his counsel. Stargardt also addressed the court personally prior to sentencing. 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 offenses, the court stated that the crimes were a

serious matter and emphasized the fact that Stargardt had burglarized a dwelling, using a dangerous weapon, while its occupant was at home. With respect to Stargardt's character, the court stated that Stargardt had been given opportunities in the past to learn and make changes, but that he still had failed to consider the consequences of his actions. The court concluded that a prison term was necessary to protect the public and effect change in Stargardt's behavior.

The court then sentenced Stargardt to five years of initial confinement and four years of extended supervision on the burglary count and to two years of initial confinement and two years of extended supervision on the substantial battery count, to be served consecutively. The court also awarded 201 days of sentence credit; ordered restitution in the amount of $31,056.71 to the victim and $4,981.28 to the Office of Crime Victim Services; and imposed standard costs and conditions of supervision. The judgment of conviction reflects that the court determined that Stargardt was not eligible for the challenge incarceration program or the substance abuse program.

The components of the bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.10(1m) (classifying burglary as a Class F felony); 940.19(2) (classifying substantial battery as a Class I felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony); 973.01(2)(b)9. and (d)6. (providing maximum terms of one and a half years of initial confinement and two years of extended supervision for a Class I felony); 939.63(1)(b) (increasing maximum term of imprisonment for a felony punishable by a maximum term of imprisonment of more than five years by an additional five years); 939.63(1)(c) (increasing maximum term of imprisonment for a felony punishable by a maximum term of imprisonment of more than two years, but less than or equal to five years, by an

additional four years) (all 2009-10 Stats.). There is a presumption that a sentence "'well within the limits of the maximum sentence'" is not unduly harsh, and the sentences imposed here were 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 (quoted sources omitted).

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 Dennis Schertz is relieved of any further representation of Robert Stargardt in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals