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DISTRICT III

March 24, 2015

To:

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

2014AP2324-CRNM State of Wisconsin v. Brandon L. Bernstein (L. C. #2013CT94)

Before Hruz, J.¹

Counsel² for Brandon Bernstein filed a no-merit report concluding there is no arguable basis for Bernstein to withdraw his no contest plea or challenge the sentence imposed for hit-and-run of an attended vehicle that did not involve death or injury to a person. Bernstein was advised of his right to respond to the report and has not responded. Upon our independent

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² The no-merit report was authored by attorney Donald Lang. Attorney Colleen Marion was subsequently appointed as replacement counsel.

review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears.

Pursuant to a plea agreement, Bernstein entered a no contest plea to the charge in return for the State's agreement to dismiss three traffic citations and not to recommend probation time if Bernstein paid restitution prior to sentencing. Bernstein paid the \$1000 restitution before the sentencing hearing, and the State recommended a sixty-day jail sentence and a ten percent restitution surcharge. The defense requested a shorter jail sentence, if any. The court considered Bernstein's substantial prior record, which included prison sentences and revocation of probation and extended supervision, and imposed a thirty-day jail sentence with Huber privileges, the minimum \$300 fine and costs, and a ten percent restitution surcharge.³

The record discloses no arguable manifest injustice upon which Bernstein could withdraw his no contest plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a Plea Questionnaire/Waiver of Rights form and the jury instructions, informed Bernstein of the elements of the offense, the potential penalties and the constitutional rights he waived by pleading no contest. The complaint served as the factual basis for the plea. It alleged that Bernstein struck an occupied vehicle from behind, backed away, and drove off. As required by *State v. Hampton*, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Bernstein it was not bound by the parties' sentence recommendations. The record shows the plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry

³ The court initially also imposed a DNA surcharge that was later rescinded.

of a valid no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence of six months in jail and a \$1000 fine, and it was required to impose a fine of at least \$300. *See* WIS. STAT. § 346.74(5)(a). The court considered no improper factors, and the thirty-day sentence is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

This court's independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Colleen Marion is relieved of her obligation to further represent Bernstein in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals