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DISTRICT III

April 21, 2015

To:

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Circuit Court Judge
Shawano County Courthouse
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Shawano, WI 54166

Sue Krueger
Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2014AP1571-CRNM State of Wisconsin v. Stuart L. Long (L. C. #2013CF211)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Stuart Long has filed a no-merit report concluding there is no basis to challenge Long's conviction for two counts of delivering methamphetamine. Long was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

This matter arises out of controlled buys of methamphetamine. Long was charged with three counts of delivery of methamphetamine; one count of possession of drug paraphernalia;

and one count of resisting an officer, for fleeing when police ordered him to stop. Long pled no contest to two counts of delivery of methamphetamine and the remaining charges were dismissed outright. The circuit court adopted a joint sentencing recommendation of four years' initial confinement and four years' extended supervision on each count, concurrently.

There is no manifest injustice upon which Long could withdraw his pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Long of the constitutional rights he waived by pleading no contest, the elements of the offenses and the potential penalties. The court specifically advised Long it was not bound by the parties' agreement, and the amended complaint with numerous police reports provided an adequate factual basis supporting the conviction. The court did not advise Long of potential deportation consequences of the pleas, but it ascertained Long was born in the United States, so that provides no grounds for relief. See WIS. STAT. § 971.08(2);¹ *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. The record shows the pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis to challenge the court's sentencing discretion. A defendant who affirmatively approves his sentence cannot attack it on appeal. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). In any event, the court

¹ References to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

considered the proper sentencing factors. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The sentence imposed was allowable at law and not unduly harsh or excessive. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that attorney Leonard Kachinsky is relieved of further representing Long in this matter.

Diane M. Fremgen
Clerk of Court of Appeals