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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

April 28, 2015

To:

Hon. James R. Habeck
Circuit Court Judge
Shawano County Courthouse
311 N. Main Street
Shawano, WI 54166

Sue Krueger
Clerk of Circuit Court
Shawano County Courthouse
311 N. Main Street
Shawano, WI 54166

Scott E. Niemi
Shawano County District Attorney's Office
311 N. Main St.
Shawano, WI 54166-2145

Steven D. Phillips
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Shane J. Schreiber
W6962 Ranch Rd.
Shawano, WI 54166

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

2014AP1930-CRNM	State v. Shane J. Schreiber
2014AP1931-CRNM	(L. C. Nos. 2012CF239, 2013CF208, 2013CF272)
2014AP1932-CRNM	

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

Counsel for Shane Schreiber has filed a no-merit report concluding there is no basis to challenge Schreiber's convictions for possession of drug paraphernalia and misdemeanor bail jumping in case No. 2014AP1930-CRNM; possession of narcotics and THC, both as second offenses, felony bail jumping and disorderly conduct in case No. 2014AP1931-CRNM; and operating under the influence, second offense, and two counts of felony bail jumping in case No. 2014AP1932-CRNM. Schreiber 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.

These cases stem from Schreiber's drug addictions. In exchange for Schreiber's no contest pleas to the nine counts in these three consolidated cases, nine other counts were dismissed. The circuit court imposed fines and jail sentences for two counts, imposed and stayed sentences on the remaining counts, and placed Schreiber on probation.

There is no manifest injustice upon which Schreiber 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 with attachments listing the statutory elements and penalties, informed Schreiber of the constitutional rights he waived by pleading no contest, the elements of the offenses and the potential penalties. The court specifically advised Schreiber that it was not bound by the plea negotiations and that it could "go anywhere within [the penalty] ranges" it had discussed with Schreiber.

The court's explanation was incorrect in one respect, in that the maximum penalty for the Class H felony bail jumping charges, all charged as a repeater, was ten years rather than twelve years. *See* WIS. STAT. §§ 946.49(1)(b), 939.50(3)(h), 939.62(1)(b).¹ However, the plea questionnaire contained the correct information. Moreover, "where the sentence communicated to the defendant is higher, but not substantially higher, than that authorized by law, the incorrectly communicated sentence does not constitute a *Bangert* violation and will not, as a matter of law,

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

be sufficient to show that the defendant was deprived of his constitutional right to due process of law.”² *State v. Cross*, 2010 WI 70, ¶40, 326 Wis. 2d 492, 786 N.W.2d 64.

The criminal complaints and attached police reports provided an adequate factual basis for the convictions. The court also personally confirmed that Schreiber had been convicted of the requisite offenses that either made him a habitual offender or enhanced the penalties for the drug offenses.

In case No. 2014AP1930-CRNM, police responded to a call from Schreiber’s cousin that Schreiber was turning blue after possibly taking heroin. The cousin informed police that he had picked up Schreiber from jail earlier that day and taken him to a hotel at which Schreiber obtained several baggies believed by his cousin to contain heroin. After obtaining a search warrant, police found numerous syringes, baggies, spoons and tinfoil with suspected drug residue. At the time of his arrest, Schreiber had been released on bond in a misdemeanor case and the complaint listed numerous prior convictions entered in the previous three years, including one for burglary that had been entered earlier that day.

In case No. 2014AP1031-CRNM, Schreiber’s mother called police stating Schreiber was breaking things in her house after an argument with his girlfriend. His mother told police she thought Schreiber was under the influence of a drug. Police observed Schreiber’s actions appeared to be uncoordinated. Schreiber’s mother consented to a search, which resulted in the discovery of THC, hydrocodone, oxycodone, needles, and spoons with suspected drug residue.

² Referring to *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

At the time, Schreiber was out on bond in the case described in the preceding paragraph, which contained a felony possession of heroin charge later dismissed pursuant to a plea agreement.

In case No. 2014AP1932-CRNM, Schreiber disobeyed a stop sign while driving, and an officer also observed erratic driving. Schreiber's blood alcohol content was .136%. He was out on bond on the two above-described cases, with a restriction of consuming no alcohol.

The court did not specifically advise Schreiber of the potential deportation consequences of his pleas, as required by WIS. STAT. § 971.08. However, that provides no grounds for relief, as the record demonstrates Schreiber is a United States citizen and therefore Schreiber cannot show his pleas are likely to result in deportation, exclusion or denial of naturalization. *See* WIS. STAT. § 971.08(2); *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. The record shows the pleas were knowingly, intelligently and voluntarily 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. The court considered the proper sentencing factors, including Schreiber's character, the seriousness of the offenses and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The sentences imposed were as follows: in case No. 2014AP1930-CRNM, for possession of drug paraphernalia and misdemeanor bail jumping, both as a repeater, the court imposed and stayed concurrent nine-month jail terms and placed Schreiber on probation for two years; in case No. 2014AP1931-CRNM, for disorderly conduct as a repeater, Schreiber was sentenced to time served and a \$10 fine; for the two drug possession charges, both containing the repeat drug offender enhancement, the court imposed and stayed concurrent prison sentences of

eighteen months' initial confinement and two years' extended supervision, and probation for two years; for the felony bail jumping as a repeater, Schreiber received an imposed and stayed concurrent prison sentence of four years' initial confinement and three years' extended supervision, and probation for five years; in case No. 2014AP1932-CRNM, for the second-offense OWI, Schreiber was sentenced to thirty days' jail already served, and a \$1,320 fine; for the two bail jumpings, both containing the repeater enhancements, the court again imposed and stayed concurrent prison terms of four years' initial confinement and three years' extended supervision, with twelve months' jail as a condition. There is no arguable merit to any argument that these sentences were 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 judgments are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven Phillips is relieved of further representing Schreiber in these matters.

Diane M. Fremgen
Clerk of Court of Appeals