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**DISTRICT III**

May 12, 2015

To:

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

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2014AP1139-CRNM      State v. Harry J. Darragh, III (L. C. No. 2013CF138)

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

Counsel for Harry Darragh III has filed a no-merit report concluding there is no basis to challenge Darragh's convictions for possession of a firearm by a felon and failure to comply with an officer's attempt to take a person into custody. Darragh 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 from an alcohol-fueled domestic incident. A criminal complaint alleged Darragh's girlfriend and her daughter went to Darragh's residence and found him passed out on the floor near a gun and a knife. Darragh's minor daughter was also present. The weapons were picked up and moved away from Darragh, who woke up and became angry. Darragh got another gun and began loading it, but his girlfriend also took that weapon away from him. Darragh then went out of the house, got a gas can, and began pouring gas on his girlfriend's vehicle and then on his girlfriend. He threatened to light everything on fire.

Police were summoned and found Darragh in the yard holding a gas can while arguing with his girlfriend. Officers ordered Darragh to the ground, but he ran into the house. At one point, Darragh came out of the house and poured gasoline around the front door area and threatened to light the house on fire, then went back inside and it sounded as if he was nailing the front door shut.

Darragh was charged with first-degree recklessly endangering safety; possession of a firearm by a felon; and failing to comply with an officer's attempt to take him into custody. In exchange for dismissal and read-in of the endangering safety charge, Darragh pled no contest to the remaining charges. The parties agreed to jointly recommend a sentence consisting of three years' initial confinement and three years' extended supervision on the firearm possession charge; and lesser concurrent time on the failure to comply charge. The circuit court imposed a sentence of five years' initial confinement and five years' extended supervision on the possession charge; and eighteen months' initial confinement and two years' extended supervision on the failure to comply charge, concurrently.

There is no manifest injustice upon which Darragh may withdraw his no contest pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's extensive colloquy, together with the plea questionnaire and waiver of rights form, informed Darragh of the constitutional rights he waived by pleading, the elements of the offenses, the potential penalties, and the deportation consequences. The court specifically advised Darragh that it was not bound by the parties' agreement and could impose the maximum penalties. Darragh conceded the Information provided an adequate factual basis to support the convictions. 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 Darragh'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 court appropriately characterized the conduct in this case as "extraordinarily serious." The court stated, "I mean, your conduct here is off the charts on dangerousness. I think anybody with a brain in their heads can see that." The court also noted Darragh's extensive and disturbing criminal history. The court imposed the maximum allowable sentences, but did not impose them consecutively, and also made Darragh eligible for the Challenge Incarceration Program. The sentences are not so excessive and disproportionate to the offenses committed as to shock public sentiment. *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. *See* WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Ellen J. Krahn is relieved of further representing Darragh in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*