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**DISTRICT IV**

June 3, 2015

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Waupaca County Courthouse  
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Waupaca, WI 54981

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

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2013AP2495-CRNM      State of Wisconsin v. Kevin J. Lombard (L.C. # 2012CF170)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Kevin Lombard appeals a judgment convicting him, after entry of a guilty plea, of first-degree reckless homicide. *See* WIS. STAT. § 940.02(1) (2013-14).<sup>1</sup> Attorney Suzanne Hagopian has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also Anders v. California*, 386 U.S. 738, 744 (1967); and *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-

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

merit report addresses the validity of the plea and sentence. Lombard 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 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. *State v. Bangert*, 131 Wis. 2d 246, 288-90, 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.

Lombard entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Lombard's plea, the State agreed to dismiss a charge of strangulation and suffocation, which was read-in for sentencing purposes. The circuit court conducted a proper plea colloquy, inquiring into Lombard's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his 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; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Lombard understood that the court would not be bound by any sentencing recommendations. In addition, Lombard provided the court with a signed plea questionnaire. Lombard 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 court found that the facts in the complaint provided a sufficient factual basis for the

plea, and nothing in the record or no-merit report suggests otherwise. Additionally, there is nothing in the record or in the no-merit report to suggest that trial counsel's performance was in any way deficient, and Lombard has not alleged any facts that would give rise to a manifest injustice. Therefore, his guilty plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

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

The record shows that Lombard was afforded an opportunity to comment on the PSI and that an alternative PSI was also submitted to the court. The record also shows that Lombard had the opportunity to address the court prior to sentencing, and that he did so personally. 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 offense, the court noted that no matter what sentence it imposed, nothing would make up for the loss of the victim's life. With respect to Lombard's character, the court noted Lombard's significant adult record, but also noted that Lombard had been cooperative and did not flee from the scene of the crime. The court emphasized Lombard's high risk of reoffending and concluded that a prison term was necessary to protect the public.

The court then sentenced Lombard to thirty years of initial confinement and twenty years of extended supervision. The court also awarded fifteen days of sentence credit; ordered restitution in the amount of \$11,363.80; and imposed standard costs and conditions of supervision. The judgment of conviction reflects that the court determined that Lombard was not eligible for the challenge incarceration program or substance abuse program.

The components of the bifurcated sentence imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 940.02(1) (classifying first degree reckless homicide as a Class B felony); 973.01(2)(b)1. and (d)1. (providing maximum terms of forty years of initial confinement and twenty years of extended supervision for a Class B felony). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentence imposed here was 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, 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 Suzanne Hagopian is relieved of any further representation of the Kevin Lombard in this matter pursuant to WIS. STAT. RULE 809.32(3).

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