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June 4, 2015

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

2013AP2589-CRNM State of Wisconsin v. Darrell R. McCree (L.C. # 2012CF2725)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Darrell McCree appeals a judgment convicting him, after entry of guilty pleas, of three counts of burglary as a party to a crime. *See* WIS. STAT. §§ 943.10(1m)(a), 939.05 (2013-14).[1] Attorney Russell Bohach 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); ***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-merit report addresses the validity of the pleas and sentences. McCree was

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

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 actually 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, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

McCree entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for McCree's pleas, the State agreed to dismiss and read in other charges. The circuit court conducted a standard plea colloquy, inquiring into McCree'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; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure McCree understood that the court would not be bound by any sentencing recommendations. In addition, McCree provided the court with a signed plea questionnaire. McCree 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 pleas, and there is nothing in the record or no-merit report that suggests otherwise. There is also nothing in the record or in the no-merit report to suggest that trial counsel's performance was in any way deficient, and McCree has not alleged any facts that would give rise to a manifest injustice. Therefore, his pleas were 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.

A challenge to McCree's sentences 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 McCree was afforded an 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 offenses, the court noted that the burglaries were serious and committed in broad daylight. With respect to McCree's character, the court recognized that McCree was accepting responsibility through his plea, but also noted that he had a prior juvenile record and had committed offenses while on bond. The court identified the primary goal of the sentencing in this case as preventing further offenses, and concluded that a prison term was necessary for McCree to have a "wake-up call."

The court then sentenced McCree to four years of initial confinement and four years of extended supervision on each count, to run concurrently. The court also awarded forty-six days of sentence credit; ordered restitution in the amount of $1,818.00; and imposed a victim/witness surcharge of $276.00 and other standard conditions of supervision. The court determined that the defendant was not eligible for the earned release program, boot camp, the challenge incarceration program, or the substance abuse program.

The components of the bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.10(1m) (classifying burglary as a Class F felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony). There is a presumption that a sentence "'well within the limits of the maximum sentence'" is not unduly harsh, and the sentences imposed here were 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, ¶¶31-32, 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. 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 Russell Bohach is relieved of any further representation of Darrell McCree in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals