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**DISTRICT I/IV**

July 8, 2015

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

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2014AP469-CRNM      State of Wisconsin v. Eric John Yurchich (L.C. # 2012CF3661)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Eric Yurchich appeals a judgment convicting him, after entry of guilty pleas, of theft from a person, fleeing an officer, and burglary. *See* WIS. STAT. §§ 943.20(1)(a), 346.04(3), 943.10(1m)(a) (2009-10).<sup>1</sup> Attorney Hannah Schieber has filed a no-merit report seeking to withdraw as appellate counsel. *See* 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

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

N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the pleas and the sentences. Yurchich 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 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. *See State v. Bangert*, 131 Wis. 2d 246, 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.

Yurchich entered guilty pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Yurchich's pleas, the State agreed to dismiss and read in one count of operating a motor vehicle without the owner's consent. The State also agreed to recommend that the time on the sentences for the theft and the burglary run concurrently. The circuit court conducted a plea colloquy, inquiring into Yurchich's ability to understand the proceedings and the voluntariness of his plea decisions, 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 Yurchich understood that the court would not be bound by any sentencing recommendations. The court questioned Yurchich about the medication he was taking for bipolar disorder, and Yurchich confirmed that he was getting his medication and that it

was helping. Yurchich's counsel confirmed that she believed Yurchich was competent to enter a plea.

In addition, Yurchich provided the court with a signed plea questionnaire. Yurchich indicated to the court that he went over the plea questionnaire with his counsel. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Although the court did not specifically go through the elements of each offense with Yurchich during the plea colloquy, the court asked Yurchich's counsel if she explained the elements of all three charges to him. Yurchich's counsel confirmed that she went through all of the elements and the facts of the case with Yurchich using the jury instructions that were attached to the plea questionnaire.

The no-merit report points out that the circuit court's plea colloquy could arguably satisfy the first requirement in a *Bangert* motion for plea withdrawal. *See Bangert*, 131 Wis. 2d at 266-72. Such a motion might argue that the plea colloquy was deficient in that the court did not ascertain personally with Yurchich that Yurchich understood the elements of the offenses. To pursue a postconviction motion for plea withdrawal, however, Yurchich would have to allege not only that the colloquy was deficient, but also "that he in fact did not know or understand the information which should have been provided at the plea hearing." *Id.* at 274. The no-merit report indicates that, based upon her review of the case and her discussions with Yurchich, counsel has concluded that Yurchich would be unable to meet the second *Bangert* requirement—that he did not understand the nature of the offenses to which he pled. Yurchich has not disputed counsel's characterization of his understanding of the elements of the offenses and, thus, we are satisfied that there would be no arguable merit to a motion for plea withdrawal.

Yurchich stipulated, through his counsel, that the complaint provided a factual basis for the pleas. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Yurchich has not alleged any other 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. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Yurchich'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. *See State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record shows that Yurchich 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 stated that these were "serious" offenses and that Yurchich was "out of control." With respect to Yurchich's character, the court noted his history of substance abuse and the fact that he admitted to being high at the time of the offenses. The court also considered Yurchich's history of mental health issues and his history within the criminal justice system. The court identified the primary goal of the sentencing in this case as protection of the public, and concluded that a prison term was necessary to deter him from committing further crimes.

The court then sentenced Yurchich to five years of initial confinement and five years of extended supervision on the theft from a person count; to one year of initial confinement and two and a half years of extended supervision on the fleeing an officer count; and to one year of

confinement and two and a half years of extended supervision on the burglary count. The court ordered that the sentences run concurrently. The court also awarded 183 days of sentence credit and ordered restitution in the amount of \$1,750. The court ordered that Yurchich provide a DNA sample, but waived the surcharge. The judgment of conviction reflects that the court determined that Yurchich was not eligible for the challenge incarceration program or substance abuse program.

The components of the bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.20(1)(a) and (3)(e) (classifying theft from a person as a Class G felony); 346.04(3) (classifying fleeing an officer as a Class I felony); 943.10(1m)(a) (classifying burglary as a Class F felony); 973.01(2)(b)7. and (d)4. (providing maximum terms of five years of initial confinement and five years of extended supervision for a Class G felony); 973.01(2)(b)9. and (d)6. (providing maximum terms of one and a half years of initial confinement and two years of extended supervision for a Class I felony); and 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) (all 2009-10 statutes). Yurchich faced a total length of sentence of fourteen years of initial confinement followed by twelve years of extended supervision. Although the court imposed the maximum sentence length on the theft from a person count, we are satisfied, in light of the total length of the sentence Yurchich faced on all counts and the court's imposition of concurrent sentences, that the sentences imposed were not “so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *See 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. 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 Attorney Hannah Schieber is relieved of any further representation of Eric Yurchich in this matter pursuant to WIS. STAT. RULE 809.32(3).

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