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July 14, 2015

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

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2014AP646-CRNM State of Wisconsin v. Michael A. Rosin (L.C. # 2012CF1042)

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

Michael Rosin appeals a judgment convicting him, after entry of a no contest plea, of burglary, contrary to WIS. STAT. § 943.10(1m)(a) (2013-14).[1] Attorney Michael Holzman 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-

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

merit report discusses whether the plea was entered voluntarily, knowingly, and intelligently, whether the circuit court erroneously exercised its sentencing discretion, whether the defendant was sentenced based on inaccurate information, and whether trial counsel rendered ineffective assistance. Rosin was sent a copy of the report and has filed a response that addresses many of the same issues discussed in the no-merit report. Attorney Holzman also has filed a supplemental no-merit report. Upon reviewing the entire record, as well as the no-merit reports and response, 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.

Rosin entered a no contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Rosin's plea, the State agreed to dismiss the habitual criminality penalty enhancer. The plea agreement reduced Rosin's sentence exposure by six years. *See* WIS. STAT. § 939.62(1)(c).

The circuit court conducted a standard plea colloquy, inquiring into Rosin'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 plea, 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 Rosin understood that it would not be bound by any sentencing recommendations. In addition, Rosin provided the court with a signed plea questionnaire. Rosin 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).

Rosin did not contest the court's use of the criminal complaint as a factual basis for the plea. He indicated satisfaction with his attorney, and Rosin has not alleged any other facts that would give rise to a manifest injustice. Therefore, his 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 Rosin'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 Rosin was afforded an opportunity to address the court personally and did so prior to pronouncement of his sentence. 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 stated that Rosin had entered a dwelling and caused a great deal of fear to its residents. With respect to Rosin's character, the court noted his extensive criminal history and the fact that

he was on extended supervision at the time he committed the burglary. The court identified the primary goals of the sentencing in this case as the need to protect the community and the seriousness of the offenses, and concluded that a prison term was necessary to meet those goals.

The court then sentenced Rosin to five years of initial confinement and five years of extended supervision, to be served consecutively to any sentence he was then serving. The components of the bifurcated sentence imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.10(1m)(a) (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). We are satisfied that 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, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted).

Rosin's response and the no-merit report also discuss whether Rosin was sentenced based on inaccurate information. A defendant moving for resentencing on the basis that the circuit court relied upon inaccurate information must establish both that there was information before the sentencing court that was inaccurate and that the circuit court actually relied on the inaccurate information. ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. Rosin alleges that the circuit court sentenced him based on a view that he was convicted of a felony drug offense in 2006 whereas, in fact, he was revoked from his conviction on a 1994 offense in 2006, but was not convicted of a new offense. However, the record reflects that Rosin pointed this fact out to the court at the sentencing hearing. And, there is nothing in the record suggesting that the court based its sentence on the fact that the 2006 case was a new case as

opposed to a revocation, or that the court placed any particular weight on the 2006 case. The court simply mentioned the 2006 case in its discussion of Rosin's criminal history, which dated back to 1978 and included sixteen convictions, even without counting the 2006 case as a separate conviction. We agree with counsel's assessment that an argument that Rosin was sentenced based on inaccurate information would be without merit.

The no-merit reports and response also address several potential ineffective assistance of counsel arguments. We are satisfied that counsel's initial and supplemental no-merit reports properly analyze each of these arguments as without merit. There is nothing in the record to suggest that counsel's performance was in any way deficient. We have already concluded that Rosin's guilty pleas were demonstrated to be knowingly, voluntarily, and intelligently entered. A valid guilty plea waives the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

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 Michael Holzman is relieved of any further representation of Michael Rosin in this matter pursuant to WIS. STAT. RULE 809.32(3).

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