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July 16, 2015

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

2014AP2559-CRNM State of Wisconsin v. William J. Menting (L.C. # 2013CF640)

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

William Menting appeals a judgment convicting him, after entry of a no contest plea, of one count of armed robbery. *See* WIS. STAT. § 943.32(2) (2013-14).[1] Attorney Ellen Krahn 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

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

report addresses the validity of the plea and sentence. Menting was sent a copy of the report, but has not filed a response. Upon consideration of the report and an independent review of the record, 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 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Menting entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for his plea, the State agreed to recommend a sentence consisting of ten years of initial confinement and five years of extended supervision, out of a maximum of twenty-five years of initial confinement and fifteen years of extended supervision. *See* WIS. STAT. §§ 973.01(2)(b)3 and (d)2. The defense was free to argue.

The circuit court conducted a standard plea colloquy, inquiring into Menting'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 no-merit report asserts that, although the court did not independently ascertain whether any threats or promises were made, other than the plea agreement, Menting would not be able to

allege that he in fact did not know or understand the information which should have been provided, as required by ***Bangert***, 131 Wis. 2d at 274, to make a prima facie showing for plea withdrawal. The court made sure Menting understood that it would not be bound by any sentencing recommendations.

Menting's trial counsel confirmed that there was a factual basis for the plea, and the court found that the complaint provided a sufficient factual basis. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Menting 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.

A challenge to Menting'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). In imposing sentence, the court considered the seriousness of the offense, Menting's character, and the need to protect the public. The court imposed eight years of initial confinement and seven years of extended supervision. The court imposed a $250 DNA surcharge, but Menting filed a postconviction motion to remove the surcharge, and the circuit court granted the motion. We are satisfied that the sentence imposed here, which was "'well within the limits of the maximum sentence'" was not unduly harsh nor "'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. *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 Ellen Krahn is relieved of any further representation of William Menting in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals