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DISTRICT IV

August 11, 2015

To:

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

2013AP2852-CRNM State of Wisconsin v. Leman A. Harrison (L.C. #2012CM1092)
2013AP2853-CRNM State of Wisconsin v. Leman A. Harrison (L.C. #2013CM63)

Before Higginbotham, J.[1]

Leman Harrison appeals two misdemeanor convictions for domestic abuse battery and bail jumping. Attorney Andrew Hinkel 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

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of Harrison's pleas and sentences. Harrison 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. ***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.

Harrison entered no-contest pleas pursuant to a negotiated plea agreement in which the State dismissed and read-in a number of additional charges. Harrison provided the court with a signed plea questionnaire, which the court used as a framework for its plea colloquy. Harrison 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 circuit court made further inquiries into the defendant's ability to understand the proceedings and the voluntariness of his plea decisions, as well as his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas. *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 facts set forth in the complaints—namely, that Harrison struck his girlfriend multiple times in the face when she told him she wanted to break up, and that he failed to appear at his initial appearance on that charge—provided a sufficient factual basis for the pleas. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Harrison has not alleged any other facts that would give rise to a manifest injustice. Therefore, Harrison's 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 Harrison'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 Harrison was afforded an opportunity to address the court, both personally and through counsel. 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. The court emphasized the role that Harrison's drinking had upon his behavior, and the inadequacy of his efforts to support his child. The court then structured a sentence that would give Harrison incentive to maintain sobriety and provide child support. The court sentenced Harrison to consecutive terms of nine months' detention on each of the misdemeanors, but authorized the sentences to be served on electronic monitoring rather than in jail, so long as Harrison complied with the terms of supervision. *See* WIS. STAT.

§§ 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 973.03(4)(a) (authorizing electronic monitoring).

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 judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that counsel is relieved of any further representation of the defendant in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals