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DISTRICT IV

August 12, 2015

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

2013AP2587-CRNM State of Wisconsin v. Michael Ralph Paul (L.C. #2012CF109)

Before Lundsten, Sherman and Blanchard, JJ.

Michael Paul appeals a judgment convicting him of first-degree reckless homicide. Attorney Michael Covey has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14);[1] *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 Paul's plea and

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

sentence. Paul 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.

Paul entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Paul's plea, the State filed an amended information reducing the homicide charge from first-degree intentional to first-degree reckless, and agreed to dismiss and read in an additional charge of hiding a corpse.

The circuit court conducted a standard plea colloquy, inquiring into Paul's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring Paul's understanding of the nature of the charge, 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; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Paul understood that the court would not be bound by any sentencing recommendations. In addition, Paul provided the court with a signed plea questionnaire and attached jury instructions. Paul 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 facts set forth in the complaint—including that Paul called a friend in a panic to say that he had snapped and hit his girlfriend and she was unconscious on the floor; that police subsequently recovered the woman's body from under the stairs in Paul's basement; and that the autopsy revealed evidence of strangulation and multiple blunt force trauma to the woman's face and ribs—provided a sufficient factual basis for the plea. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Paul has not alleged any other facts that would give rise to a manifest injustice. Therefore, Paul's plea was valid and operated to waive all nonjurisdictional defects and defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Paul'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. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Paul was afforded an opportunity to comment on the PSI and 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. Regarding the severity of the offense, the court noted that Paul had beaten the victim to death with multiple blows, and that the "terribly brutal" crime would affect the victim's family for a long time. With respect to Paul's

character, the court concluded that the inconsistencies in Paul's multiple accounts of the homicide showed that he was a liar, and that hiding the body for three days showed that he did not take responsibility for his actions. The court identified the primary goals of the sentencing in this case as punishment and deterrence rather than rehabilitation, and concluded that a lengthy prison term was necessary so that Paul would be too old to harm anyone else by the time he was released.

The court then sentenced Paul to 28 years of initial confinement and 12 years of extended supervision. The court also ordered restitution in the amount of $4,058 and awarded 343 days of sentence credit, as stipulated by the parties; and imposed standard costs and conditions of supervision. The court determined that Paul was not eligible for the challenge incarceration or substance abuse programs due to the nature of the offense.

The components of the bifurcated sentence imposed were within the applicable penalty ranges and the total imprisonment period constituted only two-thirds of the maximum exposure Paul faced. *See* WIS. STAT. §§ 940.02(1) (classifying first-degree reckless homicide as a Class B felony); 973.01(2)(b)1. and (d)1. (providing maximum terms of 40 years of initial confinement and 20 years of extended supervision for a Class B felony) (2009-10, Stats.).

There is a presumption that a sentence "'well within the limits of the maximum sentence'" is not unduly harsh, and 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.'" *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted). That is particularly true when taking into consideration

that the charge here had been reduced from first-degree intentional homicide and the charge of hiding a corpse had been read in.

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

Diane M. Fremgen
Clerk of Court of Appeals