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August 26, 2015

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

2014AP181-CRNM State of Wisconsin v. Charles D. Odom (L.C. #2011CF1631)

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

Charles Odom appeals a judgment convicting him of first-degree reckless homicide. Attorney Mark Rosen 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 Odom's plea and

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

sentence. Odom was sent a copy of the report, and filed a short response asserting that he has mental health problems that make it difficult for him to understand "what to look for" concerning his appeal. Upon reviewing the entire record, as well as the no-merit report, Odom's response, and a supplement to 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 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Odom entered a plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Odom's plea, the State filed an amended information reducing the charge from first-degree intentional homicide by use of a dangerous weapon to first-degree reckless homicide without an enhancer, and agreed to recommend twenty-two years of initial confinement.

The circuit court conducted a standard plea colloquy, inquiring into Odom's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Odom's 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; ***Bangert***, 131 Wis. 2d at

266-72. The court made sure Odom understood that it would not be bound by any sentencing recommendations. In addition, Odom provided the court with a signed plea questionnaire, and Odom is not claiming that he misunderstood any of the information provided on that form. *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—namely, that an eyewitness identified Odom as the person who had shot another man in the park following an altercation—provided a sufficient factual basis for the plea. Counsel was diligent in seeking discovery and obtaining a competency evaluation, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Odom has not alleged any other facts that would give rise to a manifest injustice. Therefore, Odom's plea was 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; WIS. STAT. § 971.31(10).

A challenge to Odom'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 Odom 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. Regarding the severity of the offense, the court deemed it more serious than the average reckless homicide because Odom fired four bullets into the

victim, and likely would have been convicted of first-degree intentional homicide absent the plea. With respect to character, the court emphasized Odom's immaturity and failure to rationally think through his anger at the victim. The court held out some hope for Odom presenting a lower than average chance of committing additional crimes, given his age, his acceptance of responsibility, and his progress in programs he participated in at Lincoln Hills while awaiting sentencing. However, the court also noted that the time needed for punishment in this case exceeded the time that would be necessary to achieve rehabilitative goals.

The court then sentenced Odom to eighteen years of initial confinement and seven years of extended supervision. The court also awarded 415 days of sentence credit, ordered restitution in the amount of $6,351, and imposed standard costs and conditions of supervision. The judgment of conviction reflects that the court determined that the defendant was not eligible for the challenge incarceration program or substance abuse program 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 about 42% of the maximum exposure Odom 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 forty years of initial confinement and twenty years of extended supervision for a Class B felony).

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 Odom avoided a mandatory sentence of life imprisonment by entering his plea.

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 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