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DISTRICT II

October 7, 2015

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

2015AP1404-CRNM State of Wisconsin v. Blair K. LaRose (L.C. #2014CF836)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Blair K. LaRose appeals a judgment convicting him of delivery of heroin (<3 grams) and second-degree recklessly endangering safety. LaRose's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). LaRose was advised of his right to file a response but has not done so. Upon considering the no-merit report and independently reviewing the record as mandated by ***Anders***, we conclude the judgment may be summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

The Racine County Metro Drug Unit arranged three controlled buys of heroin from LaRose and his girlfriend through a confidential informant (CI). At least twice, the couple's two small children were in the vehicle when the transactions took place. On the third occasion, LaRose did not have the amount of heroin the CI had requested. LaRose offered to leave one of the children with the CI as collateral while he went to his source in Kenosha for the remainder.

The State charged LaRose with three counts of manufacture/deliver heroin (<3 grams), second or subsequent offense, four counts of second-degree recklessly endangering safety, as a repeater, and one count of possession of drug paraphernalia, as a repeater. LaRose entered guilty pleas to two counts of delivery of heroin and no-contest pleas to two counts of recklessly endangering safety. The remaining charges were dismissed and read in. He was sentenced to a total of ten years' initial confinement and five years' extended supervision on the heroin charges. On the endangering safety charges, the court ordered three years' probation consecutive to the extended supervision and then, on each charge, imposed and stayed three years' initial confinement and two years' extended supervision to run consecutively. This appeal followed.

The no-merit report first considers whether there is arguable merit to a challenge to LaRose's guilty plea. We agree with appellate counsel that there is not.[2] LaRose executed a plea questionnaire and waiver-of-rights form that, along with the court's colloquy, informed him of the constitutional rights he waived by pleading guilty and no-contest, the elements of the

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[2] Although the trial court did not advise LaRose of his pleas' potential deportation consequences, *see* WIS. STAT. § 971.08(1)(c), it did ask, "Citizenship is not an issue, counsel?" Counsel replied, "Correct, Judge." Also, the potential deportation consequences "understanding" on the back of the plea questionnaire/waiver-of-rights form was one of three crossed out and the other two are not applicable to LaRose's offenses. We conclude there is no issue of arguable merit. *See* ***State v. Douangmala***, 2002 WI 62, ¶23, 253 Wis. 2d 173, 646 N.W.2d 1; *see also* § 971.08(2).

offenses, and the potential sentence, and told the court that he understood the information. The court emphasized that it was not bound by the plea negotiations and could sentence him to the maximum prison term and also could order restitution if warranted. The parties stipulated that the court could use the complaint as a factual basis for the pleas. The record shows that the pleas were knowingly, voluntarily and intelligently entered. *See* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14; ***State v. Bangert***, 131 Wis. 2d 246, 260-62, 389 N.W.2d 12 (1986). Entry of a valid guilty or no-contest plea constitutes a waiver of any nonjurisdictional defects and defenses. *See* ***id.*** at 265-66.

We also agree that there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was unduly harsh, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court considered the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, and determined that the gravity of the offense and need to protect the public were of greatest importance. ***Gallion***, 270 Wis. 2d 535, ¶¶40-41.

In fashioning its sentence, the court took into account that when sent to live with his father at age fourteen, the father, instead of straightening LaRose out, taught him "how to drink, how to use drugs, how to sell drugs." It also noted that LaRose "fessed up" and accepted responsibility upon arrest. Outweighing the mitigating factors was the seriousness of the crimes, LaRose's lengthy criminal history and minimal employment history, his daily sales of heroin to support his and his girlfriend's daily use habits, and the legislature's intent to "make a statement to the community … that if you take the risk of dealing these substances, you risk your liberty for a long period of time."

LaRose faced fifty-three years' imprisonment and/or a $100,000 fine. Considering the potential peril in which he placed his one- and three-year-old daughters and the increasing toll heroin is taking in our communities, a claim could not be sustained that the sentence "is 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." ***Ocanas***, 70 Wis. 2d at 185.

Our independent review of the record discloses no other potential issues for appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representing LaRose in this matter.

Diane M. Fremgen
Clerk of Court of Appeals