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DISTRICT III

December 15, 2015

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

2015AP371-CRNM State of Wisconsin v. Zachary Ryan Wiegand (L. C. # 2009CF64)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Zachary Wiegand filed a no-merit report concluding there is no arguable basis for Wiegand to withdraw his guilty plea or challenge the sentences imposed for armed robbery and arson. Wiegand was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

In 2009, after the circuit court denied Wiegand's motion to suppress his statements to police, Wiegand entered guilty pleas to armed robbery and arson. This court reversed the judgment of conviction, concluding the court should have suppressed evidence derived from Wiegand's statement to police after he invoked his right to remain silent.

On remand, Wiegand filed motions for a change of venue, severance of the arson charge from the armed robbery charge, suppression of evidence regarding the gun used in the robbery, suppression of his wife's statements based on marital privilege, and other evidence he claimed was derived from the statement that we ordered suppressed. After the court denied the motions for change of venue, severance and suppression of the gun, but before the court decided the remaining suppression issues, the parties reached a plea agreement.

Under the terms of the plea agreement, Wiegand entered guilty pleas to the same two charges in return for the State's agreement to recommend ten years' initial confinement, concurrent with a sentence he was then serving in Minnesota. The court accepted the plea agreement and imposed concurrent sentences totaling twelve years' initial confinement and thirteen years' extended supervision, concurrent with the Minnesota sentence.

The record discloses no arguable manifest injustice upon which Wiegand could withdraw his guilty pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form, informed Wiegand of constitutional rights he waived by pleading guilty, the elements of the offenses and the potential penalties. In an addendum to the plea questionnaire, Wiegand stated he was giving up his right to challenge the searches unless the court had already denied a suppression motion. As required by ***State v. Hampton***, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Wiegand that it was not bound by the parties' sentence recommendations. As required by WIS. STAT. § 970.08(1)(c),[1] the court gave Wiegand the

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

deportation warning. The parties stipulated to use the preliminary hearing as the factual basis for the pleas. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Except as provided in WIS. STAT. § 971.31(10), guilty pleas constitute a waiver of nonjurisdictional defects and defenses. ***Id.*** at 293. WISCONSIN STAT. § 971.31(10) allows an appeal from an order denying a suppression motion. The only suppression issue the court decided before the guilty plea was Wiegand's motion to suppress the gun, which motion the court denied. The record discloses no arguable basis for overturning that decision. The record supports the circuit court's finding that Wiegand's purchase of the gun was established before he was questioned by police, and any challenge to that finding would lack arguable merit.

The record discloses no arguable basis to challenge the sentencing court's discretion. The court appropriately considered the seriousness of the offenses, Wiegand's character and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court could have imposed consecutive sentences totaling forty-three and one-half years' imprisonment and fines totaling $110,000. The court considered no improper factors and the twenty-five-year sentence is not arguably so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of his obligation to further represent Wiegand in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals