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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

December 10, 2015

To:

Hon. Stephen E. Ehlke
Circuit Court Judge, Br.15
Dane County Courthouse
215 South Hamilton, Rm. 7107
Madison, WI 53703

Ismael R. Ozanne
District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

J. Steven House
House Law Office
222 S. Hamilton Street, Ste. 12
Madison, WI 53703-3201

Eric D. Bass 558213
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

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

2015AP546-CRNM State of Wisconsin v. Eric D. Bass (L.C. # 2014CF435)

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

Eric D. Bass appeals a judgment convicting him of one count of conspiracy to commit armed robbery, one count of armed robbery, party to a crime, and two counts of first-degree sexual assault, party to a crime. *See* WIS. STAT. §§ 943.32(2), 939.31, 940.225(1)(c) and 939.05 (2013-14).¹ Appellate counsel, J. Steven House, has filed a no-merit report under WIS. STAT. RULE 809.32 and *Anders. v. California*, 386 U.S. 738 (1967). Bass has not filed a response.

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

The no-merit report addresses the validity of the plea and sentence.² We conclude that there are no arguably meritorious issues.

Pursuant to a plea agreement, Bass pled no contest to one count of conspiracy to commit armed robbery, one count of armed robbery, party to a crime, and two counts of first-degree sexual assault, party to a crime. A third sexual assault count and repeater allegations were dismissed. A presentence report, without a sentence recommendation, was ordered. The circuit court sentenced Bass to twenty years for each armed robbery count, comprised of ten years of initial confinement and ten years of extended supervision, to run concurrently. The court sentenced Bass to twenty years for each sexual assault count, comprised of fifteen years of initial confinement and five years of extended supervision, to run concurrently to each other and consecutively to the armed robbery sentences.

In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective and 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, 249-52 & n.6, 471 N.W.2d 599 (Ct. App. 1991).

² Attorney House also states that Bass believes his trial attorney was ineffective because she convinced him to enter a plea despite the fact that he wanted to go to trial. During the plea colloquy, Bass told the court that he was satisfied with his attorney's representation. Bass has not filed a response claiming that his attorney was ineffective.

A signed plea questionnaire is in the record. Bass assured the circuit court that he had read the form with his attorney and understood its contents. The court explained the various constitutional rights that were being waived by the plea, and Bass confirmed that he understood he was giving up each right. The court advised Bass that it was not bound by the parties' sentencing recommendation and could impose the maximum sentence if appropriate. Bass said he understood. The court explained the four crimes being pled to, including the party to a crime aspect, and Bass told the court that he understood. The court noted that the jury instructions for the crimes were attached to the plea questionnaire. The court ascertained that Bass's attorney had reviewed the jury instructions with Bass and that Bass understood the elements of the crimes. The plea colloquy shows that the court complied with the requirements of WIS. STAT. § 971.08 and *Bangert*. A meritorious challenge to the validity of the pleas could not be raised.

A challenge to the sentence also would lack arguable merit. Sentencing is committed to the circuit court's sound discretion and appellate review is limited to determining whether the court erroneously exercised that discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court identified the gravity of the crimes as the primary sentencing factor. The court described the crimes as "horrific" and "totally vile, narcissistic, [and] craven." The court stated that the crimes were "an assault on [the] victims' human dignity" and a "violation of the sanctity of their home." The court stated that Bass needed correctional treatment in a confined setting. The court also considered the need to protect the public from Bass's criminal conduct.

The components of the bifurcated sentence were within the applicable penalty range. See WIS. STAT. §§ 943.32(2) (armed robbery is a Class C felony); 973.01(2)(b)3. and (2)(d)2. (establishing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony); and WIS. STAT. §§ 940.225(1)(c) (first-degree sexual

assault is a Class B felony); 973.01(2)(b)1. and (2)(d)1. (establishing 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 within statutory limits is not unduly harsh. *State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. The sentence imposed in this case is not “so disproportionate to the offense[s] committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.*, ¶31 (quoted source omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

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

IT IS FURTHER ORDERED that J. Steven House is relieved of any further representation of Bass in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals