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DISTRICT IV

March 8, 2016

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

2014AP1785-CRNM State of Wisconsin v. Helen D. Munro (L.C. # 2012CF77)

Before Lundsten, Higginbotham and Sherman, JJ.

Helen Munro, n/k/a Helen West, appeals a judgment convicting her of burglary to a dwelling, as amended by a subsequently entered stipulation on restitution. Attorney Timothy O'Connell has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12)[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.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

429 (1988). The no-merit report addresses the validity of West's plea and sentence. West 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. ***State v. Bangert***, 131 Wis. 2d 246, 283-84, 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.

West entered a no-contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for West's plea, the State agreed to refrain from charging two additional burglaries, which would instead be read-in with respect to restitution.

It appears that the circuit court relied primarily upon a plea questionnaire with an attached jury instruction, rather than conducting a thorough plea colloquy to satisfy itself as to whether West was entering her plea knowingly and voluntarily. *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. However, counsel informs us that he has discussed potential defects in the plea colloquy with the defendant, but sees no basis for plea withdrawal because West is not indicating that she misunderstood any of the information that was provided on the plea questionnaire.

We see nothing in the record to suggest that counsel's performance was in any way deficient, and West has not alleged any other facts that would give rise to a manifest injustice.

Therefore, West's plea was valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to West'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 West was afforded an opportunity to comment on the presentence investigation report and to address the court, both personally and through counsel. West also argued that a low risk assessment in the COMPAS report supported probation. West did not request placement in either the Challenge Incarceration Program, or the Substance Abuse Program.

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 West had taken away assets that other people had worked hard to accumulate the right way. With respect to West's character, the court gave her credit for her military service and leading a relatively stable life up to the crime spree underlying the instant charge. However, the court was concerned that West was minimizing her responsibility by placing too much of the blame on her co-defendant, her financial difficulties, and her physical limitations. The court concluded that a prison term was necessary to provide punishment and protect the public.

The court then sentenced West to two years of initial confinement and three years of extended supervision. The court also awarded one day of sentence credit, as stipulated by the parties; ordered restitution in the amount of $29,961.41 to be joint and severable with a co-defendant, also as stipulated by the parties; directed West to provide a DNA sample and pay the surcharge, and imposed other standard costs and conditions of supervision. The court also granted West's request for a week to get her affairs in order before reporting for her sentence, based upon the low risk assessment in the COMPAS report.

The components of the bifurcated sentence were within the applicable penalty ranges and the total imprisonment period constituted about 25% of the initial incarceration and 40% of the maximum exposure West faced. *See* WIS. STAT. §§ 943.10(1m)(a) (classifying burglary of a building or dwelling as a Class F felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and one-half years of initial confinement and five years of extended supervision for a Class F 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 it right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. That is particularly true when taking into consideration that West avoided additional sentence exposure on the read-in offenses.

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