OFFICE OF THE CLERK
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

March 8, 2016

To:

Hon. Maryann Sumi
Circuit Court Judge
Dane County Courthouse
215 South Hamilton, Br. 2, Rm. 7105
Madison, WI 53703

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

Don J. Olsen, Jr.
Asst. District Attorney
Rm. 3000
215 S. Hamilton St.
Madison, WI 53703

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

Katie R. York
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Anthony M. Singleton
Dane County Jail
115 West Doty Street
Madison, WI 53703

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

2014AP2260-CRNM State of Wisconsin v. Anthony M. Singleton (L.C. # 2013CF2243)

Before Higginbotham, Sherman and Blanchard, JJ.

Anthony Singleton appeals a judgment convicting him of a second or subsequent offense of possession of THC. Assistant State Public Defender Donald Lang filed a no-merit report seeking to withdraw as appellate counsel.[1] WIS. STAT. RULE 809.32 (2013-14);[2] *see also* ***Anders***

[1] Assistant State Public Defender Katie York has since substituted as counsel for Singleton, and has not withdrawn the no-merit report.

[2] All further references in this order to the Wisconsin Statutes are to the 2013-14 version, unless otherwise noted.

v. California, 386 U.S. 738, 744 (1967); and ***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 a suppression motion and the validity of Singleton's plea and sentence. Singleton 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, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Singleton entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Singleton's plea, the State agreed to dismiss two other charges and a repeater allegation, and to make a joint recommendation for a three-year period of probation with the option of early termination after eighteen months with the approval of the probation agent.

The circuit court conducted a standard plea colloquy, inquiring into the defendant's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring the defendant's understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, 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; and

Bangert, 131 Wis. 2d at 266-72. In addition, Singleton provided the court with a signed plea questionnaire. Singleton indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *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, the preliminary hearing and the suppression motion provided a sufficient factual basis for the plea. We see nothing in the record to suggest that counsel's performance was in any way deficient, and Singleton has not alleged any other facts that would give rise to a manifest injustice. Therefore, Singleton's plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from a suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

Singleton moved to suppress evidence based upon an unlawful detention. Madison Police Officers Tanner Gerstner, Brian Vandervest, and Chris Kobinsky were dispatched to investigate a report that there were people who appeared to be sleeping in two cars parked on a residential street about a block from a known drug area on a very hot day. Gerstner thought the two vehicles likely had some relation to one another, given the rarity of finding any cars parked on that street, much less occupied ones or two together. Gerstner approached the vehicle in front and saw two people inside who appeared to be sleeping and sweating, which gave him some concern about hyperthermia because it was a very hot day. When Gerstner tapped on the driver's side window, a rear seat passenger woke up and opened the door. Once the door was opened, Gerstner was able to see a bottle of vodka on the floor of the vehicle, and could smell the odor of marijuana.

Meanwhile, Vandervest and Kobinsky approached the vehicle in back. While Vandervest spoke with the driver and made a comment about smelling marijuana, Kobinsky attempted to speak with the passenger, Singleton. Kobinsky thought Singleton looked disoriented, because he was looking around in various directions, but was not responding to Kobinsky's attempts to speak with him. Kobinsky then opened the passenger side door and immediately detected a strong odor of marijuana from the vehicle, upon which he asked Singleton to exit the vehicle and requested permission to search him.

The circuit court determined that the detention was justified under the community caretaker doctrine, because the occupants of the two vehicles could be suffering from either heat exhaustion (given the heat of day and their rolled up windows) or a drug overdose (based on appearing to be asleep and/or disoriented in their cars near a drug neighborhood). We agree that the initial approach of the officers was justified by the community caretaker function, and further conclude that the police also had reasonable suspicion for an investigatory stop of the car in which Singleton was a passenger as soon as they smelled the odor of marijuana from the driver's side, all assuming without deciding that any police conduct referred to here was a search or seizure under the Fourth Amendment.

A challenge to Singleton's sentence would also lack arguable merit, because the court followed the joint recommendation of the parties, imposing a three-year period of probation with the possibility of early termination after eighteen months. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved).

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