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DISTRICT III

April 19, 2016

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

2015AP139-CRNM State of Wisconsin v. Dusty A. Sloviak (L. C. #2014CM475)

Before Stark, P.J.¹

Counsel for Dusty Sloviak has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding no grounds exist to challenge Sloviak's conviction for carrying a concealed weapon, as a repeater. Sloviak was informed of his right to file a response to the report and has not responded. Upon this court's independent review of the record as mandated by *Anders v.*

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

California, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Sloviak with carrying a concealed weapon, resisting an officer and disorderly conduct, all as a repeater. In exchange for his no contest plea to carrying a concealed weapon with the repeater enhancer, the State agreed to dismiss and read in the remaining charges and join in defense counsel's recommendation for twelve months' probation with thirty days' jail time and other conditions. Out of a maximum possible two-year sentence, the court placed Sloviak on twelve months' probation as jointly recommended, but imposed only four days of conditional jail time.

The record discloses no arguable basis for withdrawing Sloviak's no contest plea. The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Sloviak completed, informed Sloviak of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no contest plea. The court confirmed Sloviak's understanding that it was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Sloviak committed the crime charged.

Although the circuit court failed to personally advise Sloviak of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), a supplemental no-merit report indicates that Sloviak confirmed he could not show that his plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. *See* § 971.08(2). Therefore, any challenge to the plea on this basis would lack arguable

merit. The record shows the plea was knowingly, voluntarily, and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentence imposed. Where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). As noted above, the court's sentence was consistent with the parties' recommendation for twelve months' probation, though the court imposed only four, rather than thirty, days of conditional jail time—a variance that benefited Sloviak. Moreover, it cannot reasonably be argued that Sloviak's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

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

IT IS FURTHER ORDERED that attorney Andrew R. Hinkel is relieved of further representing Sloviak in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals