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April 14, 2016

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

2015AP1992-CRNM State of Wisconsin v. John L. Yang (L.C. # 2014CF357)

Before Lundsten, Higginbotham and Sherman, JJ.

John Yang appeals a judgment convicting him, after entry of a no-contest plea, of first-degree reckless endangerment of safety. *See* WIS. STAT. §§ 941.30(1) (2013-14).[1] Attorney Ana Babcock has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *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. 429

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

(1988). The no-merit report addresses the validity of the plea and sentence. Yang 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, 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.

Yang entered a no-contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Yang's plea, the State agreed to dismiss and read in another count. The State also agreed to recommend five years of initial confinement and six years of extended supervision, with the defense being free to argue.

The circuit court conducted a standard plea colloquy, inquiring into Yang's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his 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. The court made sure Yang understood that it would not be bound by any sentencing recommendations. In addition, Yang provided the court with a signed plea questionnaire. Yang 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). Yang confirmed that the complaint accurately stated what happened. His defense counsel confirmed that a factual basis existed for the plea. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Yang has not alleged any other facts that would give rise to a manifest injustice. Therefore, Yang's plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. WIS. STAT. § 971.31(10); ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

There also would be no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. The court considered 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. It cannot reasonably be argued that Yang'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). Yang faced a maximum of seven and one-half years of initial confinement and five years of extended supervision for reckless endangerment of safety, a Class F felony. *See* WIS. STAT. §§ 941.30(1), 973.01(2)(b)6m and (d)4. The court sentenced Yang to four years of initial confinement and five years of extended supervision. The court initially awarded 234 days of sentence credit, but amended the judgment of conviction to award 248 days of credit upon stipulation of the parties. The record reflects that the court found Yang to be ineligible for the Substance Abuse Program and Challenge Incarceration Program and explained its reasoning for those determinations. In short, we are satisfied that the circuit court properly exercised its discretion in sentencing Yang, such that a challenge to the sentence on appeal would be without arguable merit.

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 Ana Babcock is relieved of any further representation of John Yang in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals