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May 3, 2016

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

2015AP1951-CRNM State of Wisconsin v. Joseph Matthew Block (L. C. #2014CF161)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel¹ for Joseph Block filed a no-merit report concluding there is no arguable basis for Block to withdraw his no contest pleas or challenge the sentences imposed for two counts of delivering less than three grams of heroin. Block responded, contending his sentences are

¹ The no-merit report was filed by Attorney William Schmaal. He has been replaced by Attorney Catherine Malchow.

excessive, the sentencing court relied on inaccurate information, and the court improperly ordered restitution of the “buy money.” Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged Block with four counts of delivering heroin, maintaining a place for drug trafficking, and unlawful possession of a firearm in violation of an injunction, all as a repeat offender. Pursuant to a plea agreement, in return for Block’s no contest pleas to two of the heroin charges, the State dismissed and read in the remaining charges and dismissed the repeater allegations. The State agreed to recommend concurrent terms of five years’ initial confinement and five years’ extended supervision on each count. The court accepted the no contest pleas and imposed consecutive terms of five years’ initial confinement and five years’ extended supervision.

The record discloses no arguable manifest injustice upon which Block could withdraw his no contest pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court’s colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form, informed Block of the constitutional rights he waived by pleading no contest, the elements of the offense, and the potential penalties. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Block it was not bound by the parties’ sentence recommendations. The court also gave Block the deportation warning required by WIS. STAT. § 971.08(1)(c).² The record shows the no contest pleas were knowingly, voluntarily, and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 146, 217, 389 N.W.2d 12 (1986). Entry

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

of valid no contest pleas constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentences. The court could have imposed consecutive sentences totaling fifteen years' initial confinement and ten years' extended supervision. The court appropriately considered the seriousness of the offenses, Block's character, including fifteen adult convictions, the four read-in offenses, and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors, and the sentences are not arguably so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Block contends his sentences are excessive because they are longer than the sentences imposed in numerous other cases. That argument fails to recognize the sentencing court's duty to individualize sentences based on the facts of the case and other relevant factors. See *State v. Harris*, 2010 WI 79, ¶29, 326 Wis. 2d 685, 786 N.W.2d 409. Block's prior extensive record and the read-in offenses differentiate Block from other defendants.

Block also contends the presentence investigation report (PSI) inaccurately reported that Block had been sanctioned for possessing firearms and for threatening to harm another person. At the sentencing hearing, Block was offered an opportunity to make any corrections to the PSI, and made none. A defendant has a duty to raise claims regarding the PSI at sentencing. *State v. DeMars*, 171 Wis. 2d 666, 676, 492 N.W.2d 642 (Ct. App. 1992). Any errors in the PSI not raised at sentencing are waived and cannot be raised for the first time in a postconviction motion or appeal. *Id.*

Block contends he was sentenced on inaccurate information because the sentencing court, relying on the alleged error in the PSI, believed Block had a history of firearms violations. A defendant who claims to have been sentenced on false information must show both that the information was false and that the court relied on it. *See State v. Tiepelman*, 2006 WI 66, ¶28, 291 Wis. 2d 179, 717 N.W.2d 1. Block has not established that the PSI statements regarding firearms were false. Block submits page three of an “Inmate Classification Report,” which shows the dates of his convictions and juvenile adjudications. It does not purport to show all of the violations of probation or extended supervision. In contrast, the PSI provided details regarding the case numbers, dates of conviction, the sentences imposed, and the sanctions imposed for violating the terms of his supervision.

Block’s response to the no-merit report emphasizes the lack of convictions for firearm violations. A sentencing court is not limited to considering only crimes for which the defendant was formally charged and convicted, but should consider all relevant and available information that reasonably might bear on the proper sentence for the particular defendant. *Wasman v. United States*, 468 U.S. 559, 563-64 (1984). Block also appears to equate possession of a weapon with ownership. A person need not own a firearm in order to possess it. *State v. Black*, 2001 WI 31, ¶19, 242 Wis. 2d 126, 624 N.W.2d 363.

In addition, Block has not established that the sentencing court relied on the allegedly incorrect information contained in the PSI. Block quotes the sentencing court:

Mister Block, guess what, you can’t have a firearm or body armor. You know that. You’ve already been re-convicted repeatedly, but I am going to remind you again it is a felony to have a firearm and body armor, and I consider that, frankly, as one of the reasons your sentences are consecutive, one of the many reasons.

We construe the court's statement regarding Block's re-convictions as referring to his lengthy prior record, which included felony convictions. It does not suggest the court's belief that Block was previously convicted of a firearms violation.

Finally, there is no arguable basis for Block to challenge the court's order that he reimburse the State for the "buy money" during the term of his extended supervisions. Block cites cases that prohibit the court from imposing restitution to government agencies for indirect or collateral expenses incurred in the normal course of law enforcement. *See State v. Evans*, 181 Wis. 2d 978, 984, 512 N.W.2d 259 (Ct. App. 1994). However, the court here ordered the reimbursement as costs, specifically authorized under WIS. STAT. § 973.06(1)(am)2., a provision that did not apply at the time *Evans* was decided.

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

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

IT IS FURTHER ORDERED that attorney Catherine Malchow is relieved of her obligation to further represent Block in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals