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DISTRICT III

May 17, 2016

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

2014AP2649-CRNM State of Wisconsin v. Nicholas M. Lane
2014AP2650-CRNM (L. C. Nos. 2013CF117; 2013CF118; 2013CF184)
2014AP2651-CRNM

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

Counsel for Nicholas Lane has filed a no-merit report pursuant to WIS. STAT. RULE 809.32,¹ concluding no grounds exist to challenge Lane's convictions for fleeing or eluding a police officer, misdemeanor battery, and resisting a police officer. Lane was informed of his right to file a response to the report and has not responded. Upon our independent review of the

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

records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Lane with the following offenses arising from Oconto County Circuit Court case Nos. 2013CF117, 2013CF118, and 2013CF184: fleeing or eluding a police officer; obstructing an officer; misdemeanor battery; false imprisonment; strangulation and suffocation; disorderly conduct; resisting an officer; and two counts of felony bail jumping. The circuit court subsequently granted the State's motion to dismiss the bail jumping charges. Thereafter, the parties entered into a global plea agreement. In exchange for Lane's no-contest pleas to fleeing or eluding a police officer, misdemeanor battery, and resisting an officer, the State agreed to dismiss the remaining charges outright. The State also agreed to recommend consecutive sentences of eighteen months' initial confinement plus two years' extended supervision, nine months' jail, and nine months' jail, respectively. The court imposed maximum consecutive sentences resulting in a total of three years' initial confinement and two years' extended supervision.

The record discloses no arguable basis for withdrawing Lane's no-contest pleas. The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Lane completed, informed Lane of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering no contest pleas. The court confirmed Lane'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 complaints to support the conclusion that Lane

committed the crimes charged. The court also confirmed that any medication Lane was then taking did not affect his ability to understand the proceedings.

Although the circuit court failed to personally advise Lane of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c), the record shows that Lane is a United States citizen not subject to deportation. Therefore, any challenge to the pleas on this basis would lack arguable merit. The record shows the pleas were 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 sentences imposed. Before imposing sentences authorized by law, the court considered the seriousness of the offenses; Lane's character, including his criminal history; the need to protect the public; and the mitigating factors Lane had raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court concluded that a probationary disposition would unduly depreciate the seriousness of the offenses. It cannot reasonably be argued that Lane's sentences are so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We examine the propriety of the \$250 DNA surcharge imposed for the single felony offense. When Lane committed his crime in 2013, a DNA surcharge was discretionary with the circuit court. *See WIS. STAT. § 973.046(1g)* (2011-12). Here, the court ordered the DNA sample and surcharge contingent on whether one had previously been provided. By ordering Lane to pay the DNA surcharge only if a DNA sample had not previously been provided, the record reflects a reasoned exercise of discretion. *See State v. Long*, 2011 WI App 146, ¶¶8-9, 337

Wis. 2d 648, 807 N.W.2d 12. Any challenge to the DNA surcharge in this case would lack arguable merit.

An independent review of the records discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney William E. Schmaal is relieved of further representing Lane in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals