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DISTRICT III

June 28, 2016

To:

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

2016AP437-CRNM State of Wisconsin v. Terence E. Mills (L. C. No. 2014CF240)

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

Counsel for Terence Mills filed a no-merit report concluding there is no arguable basis for Mills to withdraw his guilty plea or challenge the sentence imposed for armed robbery as a party to a crime. Mills filed a response arguing his plea was coerced and his sentence is excessive. 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 alleged Mills and two other individuals robbed a tavern in 2008. One of the perpetrators was later identified by DNA evidence resulting in further investigation that

ultimately implicated Mills. When officers made contact with Mills in the garage area of his residence and told him he was not under arrest, Mills admitted his involvement in the robbery and described the events in sufficient detail to confirm his involvement.

Mills initially entered a plea of not guilty by reason of mental disease or defect, and the circuit court ordered a competency evaluation. Mills was evaluated by Dr. Harlan Heinz, who concluded Mills was competent to stand trial. Mills entered his guilty plea before the hearing scheduled to address his competency.

Pursuant to a plea agreement, Mills entered a guilty plea in exchange for the State's agreement to recommend a withheld sentence and ten years' probation. The court accepted the guilty plea and sentenced Mills to five years' initial confinement and ten years' extended supervision.

The record discloses no arguable manifest injustice upon which Mills could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). Because Mills indicated he suffered a traumatic brain injury, the court conducted an exemplary plea colloquy before accepting the plea. Mills assured the court that his brain injury did not impede his ability to understand the proceedings or communicate effectively with his attorney. The court informed Mills of each of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential penalties. As required by *State v. Hampton*, 2004 WI 117, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Mills that it was not bound by the parties' sentence agreement and could impose the maximum sentence. Although the court did not give the deportation warning required by WIS. STAT. § 971.08(1)(c), the psychological report shows Mills was born in the United States and is therefore not subject to deportation. The record

shows the plea was knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

In his response to the no-merit report, Mills alleges his plea was coerced because the district attorney promised to recommend probation. The State did recommend probation. The State's recommendation does not constitute coercion. Likewise, Mills' attorney's prediction that Mills would "most likely be getting a long-term probation" was not coercive. Mills does not allege, and the record does not show, any guarantee by his attorney that he would be placed on probation. In addition, before accepting the guilty plea, the court specifically reminded Mills it was not bound by the parties' recommendations.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence of forty years' imprisonment and a \$100,000 fine. The sentence of five years' initial confinement and ten years' extended supervision is well within the maximum allowable sentence, making it presumptively not unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507.

Mills contends his sentence is excessive because it was longer than the sentence imposed on his co-defendants, who were white. Nothing in the record suggests that race was a factor in the sentencing decision. Mills had a substantial prior record, including a previous conviction for armed robbery and a probation revocation, and had a pending charge for neglecting a child. These factors may differentiate Mills from the other defendants.

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 (2013-14).

IT IS FURTHER ORDERED that attorney Daniel Goggin II is relieved of his obligation to further represent Mills in this matter. WIS. STAT. RULE 809.32(3) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals