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DISTRICT III

June 28, 2016

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

2015AP72-CRNM State of Wisconsin v. Charles David Sislo
(L. C. No. 2012CF274)

Before Seidl, J.¹

Counsel for Charles Sislo has filed a no-merit report concluding there is no arguable basis for challenging a judgment of conviction for theft by false representation, as party to a crime. Sislo has responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could

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.

be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

A criminal complaint alleged Sislo improperly obtained funds using the checking account and routing numbers obtained from a woman who paid him by check for handy work. Sislo was charged with two counts of identity theft—financial gain, contrary to WIS. STAT. § 943.201(2)(a). Sislo entered into a plea agreement whereby he pled no contest to one count of misdemeanor theft by false representation, as a party to a crime, and the State moved to dismiss the second identity theft charge. In addition, the parties jointly recommended a deferred sentencing agreement that, among other things, stated Sislo would comply with all applicable laws and ordinances for a certain period of time, the parties would “make a joint Sentence recommendation of 10 days jail (2 days credit) and a \$100 fine + court costs / surcharges prepaid.” The circuit court accepted Sislo’s plea. At sentencing, the State informed the court that the parties were “going forward here with a stipulated sentence.” The State further stated, “Given that amount is being paid and no additional problems, we have a joint sentence recommendation ... of ten days in jail with two days credit and the pre-paid \$100 fine plus costs and surcharges.” The court adopted the stipulated sentence.

There is no manifest injustice upon which Sislo could withdraw his plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court’s plea colloquy, together with the plea questionnaire that Sislo signed, informed Sislo of the constitutional rights he waived by pleading no contest, the elements of the offense, and the potential penalty. Sislo specifically acknowledged the court could impose the maximum penalty, and Sislo stipulated an adequate factual basis supported the conviction. Although the court failed to advise Sislo of the potential deportation consequences required by WIS. STAT. § 971.08(1)(c), the no-merit report

represents that Sislo cannot show his plea is likely to result in being deported, and Sislo does not refute this representation in his response to the no-merit report. Therefore, no arguable issue could arise from the court's omission in that regard. The record shows the plea was knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986).

Sislo argues in his response to the no-merit report that “there was never any financial money taken, or Theft by Fraud.” He insists “there was no criminal act that took place,” and contends he “knows by facts that the Superior Police Department and the District Attorneys Office have conspired together to deprive the defendant of Freedoms and due process” Sislo also “moves for the exclusion of evidence” he claims was obtained by the “Fruits of illegal arrest.”

However, Sislo fails to appreciate that his valid no contest plea waived all nonjurisdictional defenses and defects, including claimed violations of constitutional rights. *See id.* at 265-66. The defects alleged by Sislo are not jurisdictional, and he is bound by his plea. Furthermore, although an order denying a motion to suppress evidence may be reviewable upon appeal pursuant to WIS. STAT. § 971.31(10), the record fails to show the denial of a suppression motion prior to Sislo's entry of his no contest plea, and any such motion would lack any arguable merit in any event. Sislo also attaches documents not contained in the record on appeal. We will not consider documents that are not part of the record. *See State ex rel. Wolf v. Town of Lisbon*, 75 Wis. 2d 152, 155-56, 248 N.W.2d 450 (1977).

There is also no arguable issue of merit concerning a delay in prosecuting Sislo. The complaint alleged the crime occurred during December 2010, but the criminal complaint was not

filed until August 2012. The complaint charged Sislo with felony identity theft. The statute of limitations for a felony is six years. WIS. STAT. § 939.74. The statute of limitations is the principal device, created by the people of a state through their legislature, to protect against prejudice resulting from a lapse of time. *See State v. Wilson*, 149 Wis. 2d 878, 903, 440 N.W.2d 534 (1989). In any event, Sislo does not allege prejudice due to a delay in prosecution, and the record fails to show improper motive for prosecutorial delay. *See id.* at 904. Therefore, any challenge to the pre-charging delay between the criminal offense and the filing of the criminal complaint would lack arguable merit.

The record also discloses no basis for challenging the court's sentencing discretion. The court imposed the sentence jointly recommended by the parties. When the defendant affirmatively approves a sentence, he cannot attack the sentence on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Furthermore, the sentence of ten days' jail was far below the maximum allowable under law and not overly harsh or excessive.

Our 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 Tristan Breedlove² is relieved of further representing Sislo in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

² On January 25, 2016, Assistant State Public Defender Tristan Breedlove replaced Assistant State Public Defender Martha Askins as counsel for Sislo.