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DISTRICT III

July 12, 2016

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

2016AP902-CRNM State of Wisconsin v. Derrick A. Houston (L. C. No. 2013CF580)

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

Counsel for Derrick Houston filed a no-merit report concluding there is no arguable basis for Houston to withdraw his no-contest plea or challenge the sentence imposed for armed robbery. Houston was advised of his right to respond to the report and has not 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 basis for appeal.

The complaint charged Houston with armed robbery, resisting an officer, and possession of amphetamine, each as a repeat offender. After the circuit court denied Houston's motion to

suppress the results of a photo line-up, the parties reached a plea agreement. Houston agreed to plead no contest to the armed robbery charge without the repeater allegation in return for the State's agreement to dismiss and read in the other charges and recommend a sentence of five years' initial confinement and five years' extended supervision, concurrent with another sentence Houston was serving. The court accepted the no-contest plea and imposed the sentence recommended by the State. The court also made Houston eligible for the Earned Release Program and the Challenge Incarceration Academy.

The record discloses no arguable manifest injustice upon which Houston could withdraw his no-contest plea. 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/Waiver of Rights form with attached jury instructions, informed Houston of the elements of the offense, the potential penalties, and the constitutional rights he waived by pleading no contest. Houston assured the court that his plea was not a product of any threat or promise other than the plea agreement. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Houston it was not required to follow the parties' sentence recommendations. The court gave the deportation warning required by WIS. STAT. § 971.08(1)(c) (2013-14).¹ Houston personally confirmed the facts recited in the complaint that served as the factual basis for the plea. 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). Except as provided in WIS. STAT. § 971.31(10), a valid no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Bangert*, 131 Wis. 2d at 293.

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

Under WIS. STAT. § 971.31(10), a defendant may challenge an order denying a motion to suppress evidence despite entry of a no-contest plea. However, Houston filed a statement with this court stating “I do not want to pursue the issue of the photo line-up.” Because Houston has waived his right to challenge the photo line-up, we will not address that issue.

Finally, the record discloses no arguable basis for Houston to challenge the sentence. The court could have imposed a sentence of forty years’ imprisonment and a \$100,000 fine. The court appropriately considered the seriousness of the offense, the effect on the victim, Houston’s character including his substantial prior record, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). Houston was on probation at the time of this offense. The sentencing court considered no improper factors and the ten-year sentence is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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 Daniel R. Goggin II is relieved of his obligation to further represent Houston in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals