



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

July 19, 2016

To:

Hon. John A. Des Jardins
Circuit Court Judge
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Timothy T. O'Connell
O'Connell Law Office
P.O. Box 1625
Green Bay, WI 54305-1625

Carrie A. Schneider
District Attorney
320 S. Walnut St.
Appleton, WI 54911

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Derrick D. Price 557546
Racine Youthful Offender Corr. Facility
P.O. Box 2500
Racine, WI 53404-2500

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

2015AP743-CRNM State of Wisconsin v. Derrick D. Price (L. C. No. 2014CF162)

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

Counsel for Derrick Price has filed a no-merit report concluding there is no basis to challenge Price's convictions for robbery with use of force and aggravated battery of a person sixty-two years of age or older, both as party to a crime and with repeater enhancements; and bail jumping, also as a repeater. Price was advised of his right to respond 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 merit to any issue that could be raised on appeal and summarily affirm.

Price entered no-contest pleas to the crimes charged in exchange for the State agreeing to recommend five years' initial confinement and five years' extended supervision on the first count of armed robbery; fifteen months' initial confinement and one year extended supervision on count two charging aggravated battery, consecutively; and six months' jail concurrently on count three charging bail jumping. The circuit court imposed a sentence consisting of five years' initial confinement and five years' extended supervision on count one; two years' probation withheld on count two, consecutively; and two years' probation withheld on count three, concurrently.

There is no manifest injustice upon which Price could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's colloquy, buttressed by the plea questionnaire and waiver of rights form that Price signed, informed Price of the constitutional rights he waived by pleading guilty, the elements of the offenses, and the potential penalties. The court specifically advised Price it was not bound by the parties' agreement and could impose the maximum penalties. Price conceded the probable cause portion of the complaint constituted a factual basis for the convictions.¹ The court failed to advise Price of the potential deportation consequences of his pleas. However, the no-merit report concludes there is no arguable merit to the issue, and Price does not refute that representation. *See* WIS. STAT. § 971.08(2) (2013-14); *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. The record shows the pleas were knowingly, intelligently and voluntarily entered.

¹ Price's attorney agreed during the plea colloquy that Price qualified as a repeater. To the extent it could be argued Price did not personally admit the prior convictions pursuant to WIS. STAT. § 973.12 (2013-14), the no-merit report states Price "has chosen to waive [this] issue," and Price has not refuted that statement.

See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty or no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis to challenge the court’s sentencing discretion. The court considered the proper sentencing factors, including Price’s character, the seriousness of the 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 characterized Price’s actions as a “very serious series of events that terrorized a senior citizen.” The court stated, “the degree of violence here was highly, highly culpable on the part of Mr. Price. And so it was a vicious and aggressive crime.” The court was also troubled by Price’s horrendous criminal history and “a substantial amount of substance abuse issues.” The court’s sentence was authorized by law and not unduly harsh or excessive. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other issues of arguable merit. Therefore,

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

IT IS FURTHER ORDERED that attorney Timothy O’Connell is relieved of further representing Price in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals