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July 18, 2016

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

2015AP665-CRNM State of Wisconsin v. Kristopher J. Hughes (L.C. # 2014CF436)

Before Lundsten, Higginbotham and Sherman, JJ.

Kristopher Hughes appeals a judgment convicting him of multiple felonies connected to a home invasion¹ including conspiracy to commit armed robbery, as a repeater; armed robbery, party to a crime, as a repeater; and substantial battery using a dangerous weapon, as a repeater. Attorney Michael Rosenberg has filed a no-merit report and seeks to withdraw as appellate

¹ Hughes was one of six defendants in this case related to a brutal home invasion in which the victims were physically and sexually assaulted, and robbed of money, jewelry, and ATM/debits cards.

counsel. WIS. STAT. RULE 809.32 (2013-14);² *see also Anders v. California*, 386 U.S. 738, 744 (1967), and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the plea colloquy and sentencing. Hughes was provided a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude there are no arguably meritorious appellate issues.

Having reviewed the plea colloquy, we find no defects and conclude Hughes knowingly, intelligently and voluntarily entered his guilty pleas. In order to invalidate the pleas, Hughes would be required to show that the plea colloquy was in some manner defective or that manifest injustice such as coercion, lack of a factual basis to support the charges, ineffective assistance of counsel, or the prosecutor's failure to support the negotiated plea agreement required us to invalidate the pleas. *State v. Bangert*, 131 Wis. 2d 246, 262, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n. 6, 471 N.W.2d 599 (Ct. App. 1991). We find no such defects. Further, the circuit court appropriately considered and relied upon the information contained in Hughes's plea questionnaire. The circuit court inquired whether Hughes went over the questionnaire with his counsel, understood its contents, and had no additional questions related to its contents. The record supports the court's determination that Hughes knowingly, voluntarily, and intelligently entered his pleas. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Hughes and the State entered into a negotiated plea agreement which was placed on the record. The circuit court, which had Hughes's signed plea questionnaire before it, conducted a plea colloquy which informed Hughes of the many constitutional rights he was giving up, reviewed in detail the elements of the offense, the repeater enhancement, the party to a crime provision, the maximum penalties, and the factual basis for his pleas, and advised Hughes of the firearm and voting restrictions, as well as potential immigration consequences. Trial counsel indicated his belief that Hughes was voluntarily, intelligently, and knowingly entering his pleas, and Hughes affirmed he had reviewed the plea questionnaire with counsel and had been promised nothing in addition to the plea agreement in exchange for his pleas.

We agree with appellate counsel that any error contained in the plea questionnaire with regard to Hughes's maximum sentencing exposure was insignificant and could not be shown to have affected the knowing and voluntary nature of Hughes's guilty pleas. Further, the circuit court, in reviewing the various counts with Hughes, correctly stated the maximums for each, and made certain Hughes was aware of the maximum for each count individually. We are satisfied the plea colloquy meets our standard for completeness and that Hughes's pleas are valid. *See* WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72.

We also agree that any challenge to the circuit court's sentence would lack arguable merit. Our review of the circuit court's sentence begins with the "presumption that the trial court acted reasonably," leaving the defendant with the burden to demonstrate "some unreasonable or unjustifiable basis in the record" in order for us to overturn it. *State v. Kruger*, 119 Wis. 2d 327,

336, 351 N.W.2d 738 (Ct. App. 1984). Hughes entered guilty pleas to five felonies.³ Tallying the potential imprisonment maximums as the circuit court recited them results in an exposure for Hughes of 113 and one-half years of imprisonment. When taking into consideration the concurrent nature of the sentences the circuit court imposed for each of the five counts, Hughes received twenty-five years imprisonment, with fifteen years of initial confinement and ten years of extended supervision.⁴

Counsel's summary of the circuit court's exercise of its sentencing discretion and the evidence in the record supporting the court's ultimate sentence demonstrates the circuit court's compliance with the requisite sentencing considerations set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court focused on the seriousness of the offenses as the main driver of the sentence, noting that the "gravity of the offense is outrageous" and "about as bad as you can get," and described the events of the crime as "worse than a melee." The circuit court emphasized that it was impossible to separate out which

³ The five felonies to which Hughes entered guilty pleas and the bifurcated sentences imposed are: (1) conspiracy to commit armed robbery, as a repeater, WIS. STAT. §§ 943.32(2), 939.31, 939.62(1)(c)—fifteen years' initial confinement and ten years' extended supervision; (2) armed robbery, party to a crime, as a repeater, WIS. STAT. §§ 943.32(2), 939.05, 939.62(1)(c)—fifteen years' initial confinement and ten years' extended supervision; (3) possession of a firearm by a felon, as a repeater, WIS. STAT. §§ 941.29(2), 939.62(1)(b)—five years' initial confinement and five years' extended supervision; (4) substantial battery with use of a dangerous weapon, as a repeater and as party to a crime, WIS. STAT. §§ 940.19(2), 939.05, 939.62(1)(b), 939.63(1)(c)—three years' initial confinement and three years' extended supervision; and (5) misappropriation of identifying information for purposes of obtaining money, as a repeater and party to a crime, WIS. STAT. §§ 943.201(2)(a), 939.05, 939.62(1)(b)—three years' confinement and three years' extended supervision.

It was discussed without objection by Hughes that the circuit court could consider three dismissed, but read-in, counts of first-degree sexual assault at sentencing.

⁴ The circuit court ordered that the concurrent sentences entered in this case be served consecutive to the jail time it imposed earlier in the hearing upon Hughes's revocation of probation in two other matters. The circuit court also deemed Hughes ineligible for the substance abuse and challenge incarceration programs.

defendant was involved in the physical assault of one victim and the sexual assault of the other victim, stressing that each defendant was responsible to some degree for everything that happened. In sentencing Hughes, the circuit court considered the gravity of the offense, the sentences given to the co-defendants, Hughes's relative culpability, the protection of the community, Hughes's character and need for rehabilitation, and Hughes's acceptance of responsibility. The circuit court noted it believed it appropriate that Hughes, who was twenty years old at sentencing, would be forty-six years old by the time he finished his confinement and extended supervision, and expressed its hope that Hughes's rehabilitative needs would be met while imprisoned and that Hughes would be more mature and less likely to reoffend by the time he completed his initial confinement. The circuit court fulfilled its sentencing responsibilities set forth in *Gallion*.

The fifteen years' confinement and ten years' extended supervision sentence the circuit court imposed on the Count 6 conspiracy to commit armed robbery as a repeater, along with all of the remaining sentences ordered to run concurrently, were well within the statutory ranges. While Hughes's total imprisonment exposure was 113 and one-half years, the circuit court's sentence, considering the concurrent nature of sentencing on the remaining four counts, totaled twenty-five years. Thus, Hughes's total bifurcated sentence amounted to 22% of the maximum statutory exposure.

A sentence well within the applicable statutory maximums is presumed not to be unduly harsh, and reviewing the record independently, as well as according the circuit court's analysis and decision due deference, we conclude that the sentence the circuit imposed here was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper

under the circumstances.” *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Michael Rosenberg is relieved of any further representation of Kristopher Hughes in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals