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August 31, 2016

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

2016AP1130-CRNM State of Wisconsin v. Joe L. Davis (L.C. #2015CF673)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Joe L. Davis appeals a judgment convicting him of delivery of three grams or fewer of heroin. Davis's counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967), concluding that no grounds exist to challenge the conviction. Davis received a copy of the report and was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent

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

review of the record as mandated by ***Anders*** and RULE 809.32, we accept the no-merit report, as we conclude that there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Davis entered a no-contest plea to one count of delivering heroin in an amount of three grams or fewer. A subsequent-offender penalty enhancer was dismissed pursuant to the plea agreement. The court ordered a seven-year sentence, bifurcated as four years' initial confinement and three years' extended supervision. This no-merit appeal followed.

The no-merit report first considers whether there exists any issue of arguable merit germane to the plea taking. Our review of the record satisfies us that the colloquy and procedures were appropriate in every regard.

A defendant seeking to withdraw a guilty plea after sentencing bears "the heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice." ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). The circuit court ensured that Davis's plea was knowingly, voluntarily, and intelligently entered by ascertaining that he understood the essential elements of the charge to which he was pleading, the potential punishment for the charge, and the constitutional rights being given up. *See* WIS. STAT. § 971.08; *see also* ***State v. Bangert***, 131 Wis. 2d 246, 260-262, 389 N.W.2d 12, 20-21 (1986). Davis has not alleged that the circuit court did not comply with the procedural requirements of § 971.08 or that he did not understand or know any information that should have been provided. *See* ***Bangert***, 131 Wis. 2d at 274.

Besides the thorough colloquy, the court properly looked to Davis's signed plea questionnaire/waiver of rights form. Davis expressed his understanding of the elements of the

crime, which were spelled out on a separate sheet attached to the plea questionnaire, the potential penalties, and the rights he agreed to waive, and orally reiterated that understanding under questioning by the court. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. He indicated no confusion, agreed that a factual basis supported the plea, and confirmed his understanding that the court was not bound by any sentencing recommendation. *See* ***State v. Hampton***, 2004 WI 107, ¶¶20, 23, 274 Wis. 2d 379, 683 N.W.2d 14. No issue of arguable merit could arise from this point.

The no-merit report also considers whether the circuit court properly exercised its discretion at sentencing. The court "must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409.

The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough and rational explanation for imposing the sentence it did. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-40, 270 Wis. 2d 535, 678 N.W.2d 197. It considered Davis's criminal, employment, and education histories, his ongoing drug use and significant drug-related offenses, the need to protect the public from the sale of heroin, and the sentence meted out to Davis's co-defendant.

In addition, Davis's sentence is well within the limits of the twelve-and-a-half year sentence and/or $25,000 fine that he faced. Presumptively the sentence is not overly harsh. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. The sentence also actually is not too harsh because its length is not so excessive and unusual or so disproportionate to the offense he committed as to shock public sentiment and violate the

judgment of reasonable people concerning what is right and proper under the circumstances. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We cannot say that there was an "unreasonable or unjustifiable basis in the record for the sentence imposed." ***State v. Echols***, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993). No basis exists to disturb it.

Our independent review reveals no other meritorious issues.

For the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved of any further representation of Joe L. Davis on this appeal.

Diane M. Fremgen
Clerk of Court of Appeals