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DISTRICT III

September 20, 2016

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

2015AP1177-CRNM State of Wisconsin v. Stephen Ray Harmston
(L. C. No. 2013CF303)

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

Counsel for Stephen Harmston has filed a no-merit report concluding there is no basis to challenge Harmston's convictions for substantial battery with intent to cause bodily harm, and for knowingly violating a domestic abuse order, both with domestic abuse and repeater enhancers. Harmston 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.

This matter stems from Harmston's beating of his ex-girlfriend. An Information charged Harmston with: substantial battery; false imprisonment; disorderly conduct; and knowingly violating a domestic abuse restraining order, with all of the charges including domestic abuse and repeater enhancers.

Harmston entered no contest pleas to the charges of substantial battery and violating a domestic abuse restraining order. The remaining charges were dismissed and read in. The circuit court imposed a sentence consisting of forty-two months' initial confinement and twenty-four months' extended supervision on the substantial battery charge; and two years' consecutive probation for violating the domestic abuse order.[1]

There is no manifest injustice upon which Harmston could withdraw his pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's lengthy plea colloquy, together with the plea questionnaire and waiver of rights form with attachments, informed Harmston of the constitutional rights he waived, the elements of the offenses and the

[1] We rejected a prior no-merit report and dismissed the appeal without prejudice due to confusion about court costs and surcharges. After a postconviction hearing, the circuit court modified the judgment of conviction accordingly.

potential penalties.[2] The court specifically advised Harmston that it was not bound by the parties' agreement and could impose the maximum sentences. The court failed to personally advise Harmston of the potential deportation consequences of his pleas, but that provides no grounds for relief as the record demonstrates Harmston cannot show his pleas were likely to result in deportation because he was born in Minnesota. *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 parties stipulated an adequate factual basis supported the convictions. The record demonstrates the pleas were knowingly, voluntarily and intelligently entered. *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 defenses and defects. ***Id.*** at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. The court considered the proper sentencing factors, including Harmston'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 noted Harmston's escalating criminal behavior. The court was also significantly concerned that the presentence investigation report author considered Harmston "one of the most scary people he has ever encountered." The court properly determined Harmston's behavior was intolerable in society and found "protection of the

[2] We note the circuit court repeated itself when reviewing the information regarding the repeater enhancement with Harmston. With regard to the violating-a-domestic-abuse-order count, the first recitation was correct, as the sentence cannot exceed two years. The court then repeated the recitation, and the record is thereby confusing, but this does not constitute manifest injustice. The plea questionnaire correctly stated the maximum penalties, and Harmston confirmed on the record in open court that he went over the plea questionnaire with his lawyer and it was accurate. Therefore, no issue of arguable merit appears in this regard.

public is paramount here." The court's sentence was authorized by law and not overly harsh or excessive. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We note the presentence investigation report referenced the COMPAS risk assessment, but the record shows it was not "determinative" of the sentence imposed by the circuit court. *See* ***State v. Loomis***, 2016 WI 68, ___ Wis. 2d ___, 881 N.W.2d 749. Accordingly, there is no arguable issue of merit in this regard.

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

IT IS ORDERED the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Katie York is relieved of further representing Harmston in this matter.

Diane M. Fremgen
Clerk of Court of Appeals