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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:

2015AP1008-CRNM State v. Alexander J. Schneider
2015AP1009-CRNM (L. C. Nos. 2013CF74, 2013CF80)

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

Counsel for Alexander Schneider has filed a no-merit report concluding there is no basis to challenge Schneider's convictions for attempted first-degree intentional homicide, possession of a short-barreled shotgun, battery, and felony bail jumping. Schneider 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 issue of merit that could be raised on appeal and summarily affirm.

This matter involves two consolidated appeals. Schneider was charged in the case leading to No. 2015AP1008-CRNM with five counts alleging Schneider had battered and recklessly endangered the life of G.R., a female friend, intimidated G.R. as a victim, and violated the terms of release of a felony bond in two different unrelated cases. The case leading to No. 2015AP1009-CRNM involved a seven-count complaint alleging Schneider attempted to kill C.K., a sheriff's deputy, with intent to kill; possessed a firearm in violation of a domestic abuse injunction; possessed a short-barreled shotgun; violated the terms of release on a felony bail bond in three different unrelated cases; and violated the terms of a domestic abuse injunction involving G.R.

Schneider agreed to enter no contest pleas to two counts of felony bail jumping, and misdemeanor battery in case No. 2015AP1008-CRNM. Schneider further agreed to enter pleas of no contest to attempted first-degree intentional homicide, possession of a short-barreled shotgun and one count of felony bail jumping in case No. 2015AP1009-CRNM. The State agreed to dismiss and read in the remaining counts, and recommend a sentence of not more than forty years' initial confinement plus twenty years' extended supervision. In turn, Schneider would recommend no less than twenty years' initial confinement. The circuit court imposed a sentence of forty years' initial confinement and twenty years' extended supervision on the attempted homicide charge, and various lesser concurrent sentences on each of the other counts.

There is no manifest injustice upon which Schneider may withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, buttressed by the plea questionnaire and waiver of rights form with attachments,

informed Schneider of the constitutional rights he waived by pleading, the elements of the offenses and the potential penalties.¹ The court specifically advised Schneider it was not bound by the parties' agreement and could impose the maximum penalties. The court also advised Schneider of potential deportation consequences of his pleas. Schneider conceded the criminal complaint and preliminary hearing provided an adequate basis for the convictions. Schneider stated he understood the plea agreement and answered affirmatively when asked to confirm "that is what you want to do here today." The record demonstrates the pleas were entered knowingly, intelligently and voluntarily. 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 factors, including Schneider'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 found the attempted homicide of the deputy

¹ We note the circuit court described the potential penalties for the felony bail jumping in case No. 2015AP1008-CRNM inaccurately, namely "three years of imprisonment [and] a \$10,000 fine, or both," rather than six years of imprisonment and a \$10,000 fine, or both. See WIS. STAT. §§ 946.49(1)(b) and 939.50(3)(h) (2013-14). However, the record is replete with evidence that Schneider was nonetheless aware of the correct maximum penalty. See *State v. Taylor*, 2013 WI 34, ¶¶8, 28, 34, 347 Wis. 2d 30, 829 N.W.2d 482; see also *State v. Finley*, 2016 WI 63, ¶83, ___ Wis. 2d ___, 882 N.W.2d 761. The criminal complaint properly informed Schneider of the correct maximum penalties, and each of his written plea questionnaires specifically set forth the correct penalties, which were initialed by Schneider. Schneider also told the circuit court that he understood the correct maximum penalties for the felony bail jumping counts as explained by the court for case No. 2015AP1009-CRNM. See *id.*, ¶¶8-9, 42, 52-54. As a result, the no-merit report concludes Schneider could not allege in good faith that his pleas were entered unknowingly or involuntarily. Counsel also indicated he was unaware of any extrinsic evidence that would support such a claim. Schneider failed to respond to the no-merit report and thus did not attempt to refute counsel's representations in this regard. As a result, we agree with counsel that the circuit court's misstep was not substantial enough to constitute a manifest injustice. See *id.*

particularly disturbing. The deputy had been dispatched to Schneider's residence to investigate a restraining order violation. Without warning, Schneider shot the deputy through the front door. When the deputy ran back toward his squad car, Schneider shot him again through his bedroom window. Schneider then ran to an abandoned house and kicked in part of a wall where he had previously placed a sawed-off shotgun. The deputy was struck in the face and abdomen, requiring surgery that removed a portion of his intestines. The court noted one of the bullets came within a centimeter of an artery "which would have killed [the deputy]."

The circuit court emphasized an escalating pattern of violence and lawlessness, finding Schneider had "contempt for authority, that he is unable to follow rules of the court and society, and he certainly acted with a depraved heart when he was shooting at [the deputy]." The court also found disturbing Schneider's subsequent conduct in jail, "in being assaultive toward another inmate" and battering one of the jailers. The court appropriately concluded Schneider was a "very dangerous individual." The court's sentence was allowable by law and neither overly harsh nor excessive. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We note the circuit court mentioned the COMPAS risk assessment at sentencing. However, the reference to COMPAS was not "determinative" of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, ___ Wis. 2d ___, 881 N.W.2d 749. Accordingly, any challenge to the sentence based on a reference to COMPAS would lack arguable merit.

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

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

IT IS FURTHER ORDERED that attorney William Schmaal is relieved of further representing Schneider in this matter.

Diane M. Fremgen
Clerk of Court of Appeals