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DISTRICT IV

October 28, 2016

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

2015AP1498-CRNM State of Wisconsin v. Matthew T. Somers (L.C. # 2014CF126)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Matthew Somers appeals a judgment that convicted him of stalking based upon a no contest plea. Attorney Katie York has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2013-14);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967); *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

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

Somers's plea and term of probation. Somers was sent a copy of the report, but has not filed a response. First Assistant State Public Defender Joseph Ehmann subsequently entered a notice of appearance substituting for York, and did not withdraw the no-merit report. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 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). There is no indication of any such defect here.

Somers entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Somers's plea, the State agreed to dismiss three bail jumping charges and to recommend an imposed and withheld maximum sentence subject to three years of probation.

The circuit court conducted a thorough plea colloquy, inquiring into Somers's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Somers's understanding of the nature of the charges, the penalty ranges and other direct consequences of the plea, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *Bangert*, 131 Wis. 2d at 266-72. In addition, Somers provided the court with a signed plea questionnaire, with attached

jury instruction and a calculation of sentence credit. Somers indicated to the court that he had gone over the form with counsel, and he is not now claiming to have misunderstood any of the information explained on that form. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaint and stipulated to by Somers—namely, that Somers had sent multiple text messages and emails and made several phone calls to a woman in violation of a temporary restraining order—provided a sufficient factual basis for the plea. We see nothing in the record to suggest that counsel’s performance was in any way deficient, and Somers has not alleged any other facts that would give rise to a manifest injustice. We therefore conclude that it would be frivolous to challenge Somers’s plea, and that the plea operated to waive all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Somers’s sentence would also lack arguable merit, because the circuit court withheld sentence (which was actually more favorable to Somers than the parties’ joint request to impose and stay the maximum sentence), and imposed a three-year term of probation as jointly requested by the parties. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved). The court also awarded Somers seventy-seven days of sentence credit as he requested, to be applied in the event of revocation, and ordered Somers to pay standard costs, including a single DNA surcharge and an extradition fee, without objection.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. 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 counsel is relieved of any further representation of Matthew Somers in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals