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DISTRICT III

November 1, 2016

To:

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

2015AP1736-CRNM State v. Hayes E. Kressin (L. C. No. 2013CF143)

Before Stark, P.J.¹

Counsel for Hayes Kressin has filed a no-merit report concluding there is no basis to challenge Kressin's convictions for two counts of possessing an illegally obtained prescription, and one count of possession of a controlled substance, all counts as party to a crime and with repeater enhancers. Kressin was advised of his right to respond and has failed to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967),

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

Kressin was charged with two counts of delivering Oxycodone and two counts of delivering morphine, with repeater enhancements. Kressin pled no contest to amended charges of two counts of possessing an illegally obtained prescription and one count of possession of a controlled substance, all as party to a crime and with repeater enhancements. The parties also agreed to a joint sentencing recommendation of twenty-four months' probation. The circuit court withheld sentence and adopted the recommendation.

There is no manifest injustice upon which Kressin may withdraw his no contest pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, together with the plea questionnaire and waiver of rights form that Kressin signed, informed Kressin of the constitutional rights he waived by pleading no contest, the elements of the offenses, and the potential punishment. Notwithstanding the parties' agreement, the court specifically advised Kressin it could impose the maximum penalties. Although not discussed in the no-merit report, our independent review of the record discloses the circuit court failed to personally advise Kressin of the potential deportation consequences of his pleas as mandated by WIS. STAT. § 971.08(1)(c). That failure provides no grounds for relief, however, as the record demonstrates Kressin cannot show his pleas were likely to result in his deportation because he was born in Chippewa Falls, Wisconsin. *See* WIS. STAT. § 971.08(2); *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. Kressin conceded the probable cause portion of the complaint supported the convictions. The court also confirmed Kressin was competent and that any concerns Kressin had about his mental health did not interfere with his ability to understand the proceedings. The record shows 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 no contest or guilty plea constitutes a waiver of nonjurisdictional defenses and defects. *Id.* at 265-66.

An order denying a motion to suppress evidence may be reviewable upon appeal pursuant to WIS. STAT. § 971.31(10). Although the record fails to show the denial of a suppression motion prior to the entry of Kressin's no contest pleas, the no-merit report addresses whether trial counsel was ineffective for failing to file suppression motions regarding evidence seized pursuant to a search warrant and statements Kressin made to police. However, the search warrant affidavit provided probable cause to believe evidence that Kressin delivered narcotics, after obtaining a new prescription from his doctor for Oxycodone and morphine, could be found in Kressin's residence. The affidavit states that after an individual overdosed on narcotics, that individual's wife told investigators she had driven her husband to Kressin's residence to purchase Oxycodone and morphine from Kressin. She indicated her husband had made over twenty drug purchases from Kressin within the past six months. Moreover, Kressin's statements to law enforcement were made after he waived his rights under *Miranda v. Arizona*, 386 U.S. 436 (1966), and there is no indication in the record of police coerciveness. There is no issue of arguable merit regarding suppression of evidence.

The record also discloses no basis to challenge the circuit court's sentencing discretion. A defendant who affirmatively approves his sentence cannot attack it on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). In any event, the withheld sentence and imposition of twenty-four month's probation was far below the maximum allowable under law and not overly harsh or excessive.

Our independent review of the record discloses no other potential issues for appeal.
Therefore,

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

IT IS FURTHER ORDERED that attorney Melissa Petersen is relieved of further representing Kressin in this matter.

Diane M. Fremgen
Clerk of Court of Appeals