



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

November 1, 2016

To:

Hon. Vincent R. Biskupic
Circuit Court Judge
320 S Walnut St
Appleton, WI 54911

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Angela Dawn Henderson
P.O. Box 3898
Oshkosh, WI 54903

Carrie A. Schneider
District Attorney
320 S. Walnut St.
Appleton, WI 54911

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Kevin J. Schabo 371220
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2015AP2245-CRNM State v. Kevin J. Schabo (L. C. Nos. 2013CF801, 2014CF586)
2015AP2246-CRNM

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

Counsel for Kevin Schabo has filed no-merit reports¹ concluding there is no basis to challenge Schabo's convictions for three counts of possession of methamphetamine with intent to deliver; possession with intent to deliver heroin; possession of synthetic cannabinoid; and maintaining a drug trafficking place, all as a second or subsequent offenses; possession of a firearm by a felon; two counts of felony bail jumping; obstructing an officer; and possession of drug paraphernalia. Schabo was advised of his right to respond and has failed to respond. Upon

¹ Upon this court's motion and order dated October 25, 2016, these appeals are consolidated.

our independent review of the records 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.

In appeal No. 2015AP2245-CRNM, Schabo was charged with a single count of possession of methamphetamine with intent to deliver, as a second or subsequent offense, following a drug buy in the parking lot of a Walgreens Pharmacy in Appleton. Upon a search incident to arrest, officers discovered ten individual plastic baggies containing methamphetamine in Schabo's possession.

In appeal No. 2015AP2246-CRNM, Schabo was arrested after a report of a suspicious situation in Outagamie County, in which a property owner reported a camper on her property that did not belong to her. Police made contact with two males in the camper, who provided false names. After Schabo was positively identified to be one of the males, it was determined he had outstanding warrants for his arrest. A search of his person incident to arrest revealed crystal methamphetamine. The second man in the camper told police he was a heroin user and had purchased that substance from Schabo the previous day. A search warrant was obtained for the camper, and a loaded .38 revolver was discovered, together with heroin, methamphetamine, synthetic cannabinoid, a glass pipe and digital scale with a white crystal substance on it, and baggies.

At the time of Schabo's arrest, he was subject to the provisions of a cash bond in another case in which he had been charged with strangulation and suffocation, felony bail jumping, and battery. Schabo was also subject to the provisions of a cash bond in a case in which he was charged with possession of methamphetamine with intent to deliver.

Schabo agreed to plead no contest to eleven charges as part of a global settlement, and the State agreed to make a global sentencing recommendation of no more than three years' initial confinement. The parties were free to argue the term of extended supervision. The circuit court imposed sentences totaling eight years' initial confinement and four years' extended supervision.

There is no manifest injustice upon which Schabo 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 Schabo of the constitutional rights he waived by pleading no contest, the elements of the various offenses, and the potential punishment. The court specifically advised Schabo of the potential deportation consequences of his pleas, as required by WIS. STAT. § 971.08(1)(c) (2013-14). The court also specifically advised Schabo it was not bound by the parties' agreement and could impose the maximum penalties. Schabo conceded a factual basis supported the convictions. The record shows the pleas were knowingly, intelligently and voluntarily entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no-contest plea constitutes a waiver of nonjurisdictional defenses and defects. *Id.* at 265-66.

The record also discloses no basis to challenge the circuit court's sentencing discretion. The court considered the proper factors, including Schabo'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). Commenting on Schabo's very extensive criminal record, the court stated, "You've been introduced to more judges than some lawyers in this community that don't do courtroom work." The court also stated:

[Y]ou are presenting yourself as not just a drug addict sitting in his house or trailer, his apartment, wallowing in his or her dependency

and hurting yourself but not hurting other people. I mean you are holding yourself out not just by your words but by your actions and actually your transactions as a dealer of some incredibly dangerous drugs.

The circuit court concluded a significant period of incarceration was required. The sentence imposed was far less than the maximum punishment allowed by law, and therefore presumptively neither overly harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Angela Henderson is relieved of further representing Schabo in these matters.

Diane M. Fremgen
Clerk of Court of Appeals