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 IV

March 7, 2017

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
215 South Hamilton, Br.15, Rm. 7107
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Shelly J. Rusch
Assistant District Attorney
215 S. Hamilton St., Room 3000
Madison, WI 53703-3297

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Vicki Zick
Zick Legal LLC
P.O. Box 325
Johnson Creek, WI 53038

Richard L. Harris Jr.
406 Rethke Avenue
Madison, WI 53714

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

2015AP1624-CRNM State of Wisconsin v. Richard L. Harris, Jr. (L.C. # 2014CF927)

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

Richard Harris, Jr. appeals a judgment convicting him of fourth-degree sexual assault as a repeat offender, false imprisonment as a repeat offender, and intimidation of a victim by the use of force, each as a domestic abuse incident. Attorney Vicki Zick has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);[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

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

report addresses Harris's waiver of a preliminary hearing and the entry of his pleas. Harris was sent a copy of the report, and has filed a response seeking to withdraw his pleas on the grounds that he is innocent and that he was not "in the right state of mind" at the plea hearing. Upon reviewing the entire record, as well as the no-merit report and Harris's response, 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. *See* ***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.

The State initially charged Harris with second-degree sexual assault, false imprisonment, and felony intimidation of a witness, each as domestic abuse and as a repeater. The charges were based on allegations that, when an ex-girlfriend brought Harris's child over for a visitation, Harris forced the woman into a bathroom where he used force to have intercourse with her and to stop her attempts to leave the bathroom and call for help. The woman's account was corroborated by a friend who heard the woman shouting things like "stop" and "don't touch me" from inside the bathroom and saw her exit the bathroom crying, and by a nurse who performed a rape examination and observed an abrasion and bloody discharge on the woman's vagina. A detective also took photographs of a bruise on her arm.

In exchange for Harris's pleas, the State reduced the sexual assault charge from second-degree (a class C felony) to fourth-degree (a class A misdemeanor), dropped the repeater penalty enhancer from the charge of intimidating a victim, and agreed to refrain from making a recommendation for prison so long as Harris complied with bond conditions pending sentencing. The plea agreement reduced Harris's sentence exposure by more than forty years.

The circuit court conducted a standard plea colloquy, inquiring into Harris's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Harris's understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, 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, Harris provided the court with a signed plea questionnaire. Harris indicated to the court that he understood the information explained on that form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Harris now contends that he "wasn't on [his] medication" while in lockdown for a period of several weeks ending about two weeks before the plea hearing, and was not "in the right state of mind" when he agreed to the plea deal. He states that he pled guilty to something he did not do because he was "scared to go to prison" and "was pressured." However, in response to specific questions from the circuit court during the plea colloquy, Harris denied that there was anything about his treatment for mental health issues that caused him any difficulty understanding the proceedings, and he affirmed that he was thinking clearly and able to make important decisions. Additionally, in a competency evaluation submitted to the court about two months before the plea hearing, a psychiatrist noted that, despite lacking access to medications in

jail, Harris was at that time fully oriented and able to communicate logical and appropriate responses to questions.

In any event, Harris does not identify any specific information about the nature of the charges or the rights he would be giving up that he misunderstood as the result of his mental health issues. It was natural that Harris would feel the inherent pressure of facing multiple felony counts. That does not make his decision to waive his right to assert his innocence at trial in exchange for a substantial reduction in prison exposure manifestly unjust. We further note that the facts set forth in the complaint provided the court with a sufficient factual basis to support the pleas. Therefore, Harris's pleas were valid and operated to waive all non-jurisdictional defects and defenses, including any challenge to his waiver of a preliminary hearing. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Harris's terms of probation would also lack arguable merit, since the court followed the joint recommendation of 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).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. 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 Attorney Vicki Zick is relieved of any further representation of Richard L. Harris, Jr. in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals