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April 5, 2017

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

2016AP1737-CRNM State of Wisconsin v. George Groves, Jr. (L.C. #2014CF5414)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

George Groves, Jr., appeals from a judgment convicting him of harboring/aiding a felon. Groves' appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967), concluding that there exist no issues of arguable merit. Groves was notified of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by

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

Anders and RULE 809.32, we conclude that there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Groves and three others hatched a plan to rob a fur store. He was given crack cocaine for his role as getaway driver. The men all were charged with armed robbery as party to a crime. In exchange for agreeing to testify in a co-actor's trial, Groves pled guilty to a reduced charge of harboring/aiding a felon. He was sentenced to twenty-four months' initial confinement and sixty months' extended supervision and ordered to pay joint and several restitution of $10,560.

The no-merit report addresses the following issues: whether (1) Groves entered his no-contest pleas knowingly, voluntarily, and intelligently and in compliance with ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08; (2) the trial court misused its sentencing discretion and/or imposed a sentence that was unduly harsh and unconscionable; and (3) misused its discretion when it ordered Groves to pay full restitution.

A defendant seeking to withdraw a guilty plea after sentencing bears "the heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice." ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). The circuit court ensured that Groves' plea was knowingly, voluntarily, and intelligently entered by ascertaining that he understood the essential elements of the charge to which he was pleading, the potential punishment for the charge, and the constitutional rights being given up. *See* WIS. STAT. § 971.08; *see also* ***Bangert***, 131 Wis. 2d at 260-62. Groves has not alleged that the circuit court did not comply with the procedural requirements of § 971.08 or that he did not understand or know any information that should have been provided. *See* ***Bangert***, 131 Wis. 2d at 274.

Besides the thorough colloquy, the court looked to Groves' signed plea questionnaire/waiver-of-rights form. Groves expressed his understanding of the potential penalties, the rights he agreed to waive, and the elements of the crime, which were listed on a separate sheet attached to the plea questionnaire, and orally reiterated that understanding under questioning by the court. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. He agreed that a factual basis supported the plea and confirmed his understanding that the court was not bound by any sentencing recommendation. *See* ***State v. Hampton***, 2004 WI 107, ¶¶20, 23, 274 Wis. 2d 379, 683 N.W.2d 14. No issue of arguable merit could arise from this point.

The no-merit report also considers whether the circuit court properly exercised its discretion at sentencing. The court "must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409.

The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough and rational explanation for imposing the sentence it did. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-40, 270 Wis. 2d 535, 678 N.W.2d 197. It considered Groves criminal, employment, and education histories, his ongoing drug addiction, his cooperation with authorities, and the residual impact on the victims.

Groves' sentence is well within the limits of the penalty he faced. Presumptively, therefore, his sentence is not overly harsh. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. The sentence also actually is not too harsh because its length is not so excessive and unusual or so disproportionate to the offense he committed as to

shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We cannot say that there was an "unreasonable or unjustifiable basis in the record for the sentence imposed." ***State v. Echols***, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993). No basis exists to disturb it.

A sentencing court must order that a defendant make full or partial restitution to a crime victim unless it finds "substantial reason not to do so and states the reason on the record." WIS. STAT. § 973.20(1r). In determining whether the court had the authority to order restitution given the facts before it, we apply a two-part test. *See* ***State v. Hoseman***, 2011 WI App 88, ¶16, 334 Wis. 2d 415, 799 N.W.2d 479. First, the restitution claimant must be a "direct victim" of the crime. ***Id.*** Second, there must be a causal connection between the defendant's conduct and the harm to the victim. *See* ***id.*** In proving causation, the defendant's actions must be "the precipitating cause of the injury" and the harm must have resulted from "the natural consequence" of the defendant's actions. ***State v. Madlock***, 230 Wis. 2d 324, 333, 602 N.W.2d 104 (Ct. App. 1999) (citation omitted). We liberally construe the restitution statute to allow victims to recover losses resulting from a defendant's criminal conduct. *See* ***id.*** at 332.

The court ordered that Groves and/or his co-actors reimburse the store owner for the mink coats they stole at gunpoint. Groves' role as getaway driver enabled his co-actors to escape with the furs. Even if his conduct could be said to play only a small and isolated part, he nonetheless is properly held to pay restitution on a joint-and-several basis. *See* ***id.*** at 336. Further, Groves waived his right to complain about the matter on appeal when he expressly agreed to pay restitution on the guilty-plea-and-waiver-of-rights questionnaire he signed.

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

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Becky Nicole Van Dam is relieved of further representing Groves in this matter.

Diane M. Fremgen
Clerk of Court of Appeals