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DISTRICT III

August 8, 2017

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

2016AP749-CRNM State v. Justin A. Bey (L. C. No. 2014CF32)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for Justin Bey has filed a no-merit report concluding there is no basis to challenge judgments of conviction for attempted second-degree intentional homicide, false imprisonment, and kidnapping, all as party to a crime; and bail jumping. Bey was advised of his right to respond and has not responded. Upon our independent review of the record 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.

Bey was charged with ten crimes after he and several others held an individual against his will and beat him for two days before leaving him in the woods to die in the winter. Two men riding all-terrain vehicles eventually discovered the victim and transported him for medical treatment. The victim's injuries resulted in over \$300,000 of medical expenses.

Bey pleaded guilty to attempted second-degree intentional homicide, false imprisonment, and kidnapping, all as party to a crime; and bail jumping. In exchange for his pleas, the other six counts were dismissed and read in. The circuit court imposed fifteen years' initial confinement and ten years' extended supervision on the attempted homicide count; twelve years' initial confinement and six years' extended supervision concurrently on the kidnapping count; three years' initial confinement and two years' extended supervision consecutively on the false imprisonment count; and nine months' jail concurrently on the bail jumping count.

There is no arguable issue regarding plea withdrawal. *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 and attachments, informed Bey of the constitutional rights he waived by pleading, the elements of the offenses, and the potential punishment. The court specifically advised Bey it could impose the maximum penalty and was not bound by the parties' agreement. The criminal complaint and preliminary hearing provided a sufficient factual basis supporting the conviction. Although not discussed in the no-merit report, the court failed to advise Bey of the potential deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c) (2015-16). Regardless, the record establishes Bey was born in Wisconsin, and therefore no arguable issue arises from the court's failure in this regard. 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 guilty or no-contest plea constitutes a waiver of nonjurisdictional defenses and defects. *Id.* at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. The court considered the proper factors, including Bey's character, the seriousness of the offenses, and the need to protect the public. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court emphasized Bey's willing participation in brutal events that warranted the significant punishment imposed. The sentences were well within the seventy-six years and nine months' maximum allowable by law and therefore are presumptively not overly harsh nor 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 (2015-16).

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of further representing Bey in this matter.

Diane M. Fremgen
Clerk of Court of Appeals