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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

September 8, 2017

To:

Hon. David T. Flanagan III
Circuit Court Judge
215 South Hamilton, Br 12, Rm 8107
Madison, WI 53703

Jennifer Lohr
Lohr Law Office LLC
P.O. Box 5414
Madison, WI 53705

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton, Rm. 1000
Madison, WI 53703

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

Paul L. Barnett
Assistant District Attorney
Rm. 3000
215 S. Hamilton St.
Madison, WI 53703-3211

Ollie R. Youngblood
1360 MacArthur Road, Apt. 109
Madison, WI 53714

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

2015AP2539-CRNM State of Wisconsin v. Ollie R. Youngblood (L.C. #2014CF2525)

Before Lundsten, P.J., Blanchard and Kloppenburg, 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).

Ollie Youngblood appeals a criminal judgment convicting him of being party to the crime of bail jumping. Attorney Jennifer Lohr has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2015-16);[1] *see also* ***Anders v. California***, 386 U.S.

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

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 report addresses Youngblood's plea and sentence. Youngblood was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, 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. ***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.

Youngblood entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Youngblood's plea, the State agreed to dismiss and read in another bail jumping charge and to make a joint sentencing recommendation to impose and stay a sentence consisting of eighteen months of initial confinement and eighteen months of extended supervision, subject to a two-year term of probation. The plea agreement reduced Youngblood's sentence exposure by half.

The circuit court conducted a standard plea colloquy, inquiring into Youngblood's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Youngblood'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. The court made sure Youngblood understood that it would not be bound by any sentencing recommendations. In addition, Youngblood provided the court with a signed plea questionnaire. Youngblood indicated to the court that he had fully discussed the form with his attorney, and he is not now claiming to have misunderstood any of the information explained on that form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

As to the factual basis for the plea, the State made an offer of proof that Youngblood had phone contact and went to the residence of a woman who he had reason to know was prohibited from having contact with him due to a pending case. This could support party to a crime liability for Youngblood's assisting the woman in violating a term of her bond. The circuit court found the proffer sufficient to support an Alford plea, even though Youngblood asserted that he did not understand that he was still prohibited from having contact with the woman once he was released from jail. Youngblood indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Youngblood has not alleged any other facts that would give rise to a manifest injustice, and did not obtain any rulings on a suppression motion that would have been preserved for review. Therefore, Youngblood's plea was valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Youngblood's sentence would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record"

in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Youngblood was afforded an opportunity to address the circuit court prior to sentencing. The court then sentenced Youngblood to one year of initial confinement and two years of extended supervision, to be stayed subject to a two-year term of probation. The court awarded ninety days of sentence credit as agreed to by the parties. The court also determined that Youngblood was eligible for the challenge incarceration program and the earned release program, although it noted that he was unlikely to actually participate in either program since he would only be serving nine months in the event of revocation. The judgment also included a single mandatory DNA surcharge.

The components of the bifurcated sentence were within the applicable penalty range and the total imprisonment period constituted only a third of the maximum exposure Youngblood faced. *See* WIS. STAT. §§ 946.49(1)(b) (classifying bail jumping as a Class H felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony).

Youngblood also has no grounds to challenge the circuit court's exercise of its sentencing discretion, because the court imposed a term of initial confinement less than Youngblood's own recommendation. *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. 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 counsel is relieved of any further representation of the defendant in this matter pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals