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DISTRICT III

October 17, 2017

To:

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

2017AP614-CRNM State of Wisconsin v. Martin John Johnson (L. C. No. 2014CF75)

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 Martin Johnson has filed a no-merit report concluding there is no arguable basis for Johnson to withdraw his guilty plea or challenge the sentence imposed for conspiracy to deliver between ten and fifty grams of methamphetamine. Johnson was advised of his right to respond to the report 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 basis for appeal.

The complaint, naming ten individuals, charged Johnson with conspiracy to deliver more than fifty grams of methamphetamine, a Class C felony. Pursuant to a plea agreement, Johnson entered a guilty plea to conspiracy to deliver less than fifty grams, a Class D felony. Under the terms of the agreement, Johnson was required to fully cooperate with law enforcement, the State would not ask to amend or revoke Johnson's bond, and both sides would be free to argue at sentencing. The circuit court accepted Johnson's guilty plea and sentenced him to twelve years' initial confinement and ten years' extended supervision with sentence credit of 319 days, and it made Johnson eligible for the Challenge Incarceration Program and Substance Abuse Programming.

The record discloses no arguable manifest injustice upon which Johnson could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's plea colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form, informed Johnson of the constitutional rights he waived by pleading guilty, the elements of the offense and the potential penalties. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Johnson it was not bound by the parties' sentence recommendations. The parties agreed the complaint would serve as the factual basis for the plea. As required by WIS. STAT. § 971.08(2) (2015-16), the circuit court informed Johnson that this conviction could result in his deportation if he was not a citizen. The record shows the guilty plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence of twenty-five years' imprisonment and a \$100,000 fine. The court appropriately considered the seriousness of the offense, Johnson's character, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The facts disclosed by the complaint show that Johnson was the main distributor of methamphetamine in this conspiracy, and involved many "lower level dealers" to distribute the drug. The court faulted Johnson's minimization of his culpability and found no genuine remorse. Johnson's record included crimes against persons, crimes against government, drug crimes, and revoked probations. The court considered no improper factors, and the twenty-two-year sentence is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21 (2015-16).

IT IS FURTHER ORDERED that attorney Mark Schoenfeldt is relieved of his obligation to further represent Johnson in this matter. *See* WIS. STAT. RULE 809.32(3) (2015-16).

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

Diane M. Fremgen
Clerk of Court of Appeals