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December 19, 2017

To:

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

2016AP1349-CRNM State v. Jerry J. Bean (L. C. No. 2014CF2970)

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 Jerry Bean, Jr., has filed a no-merit report concluding there is no basis to challenge Bean's conviction for battery with a domestic abuse repeater enhancer. Bean was advised of his right to respond and has failed to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable issue of merit that could be raised on appeal and summarily affirm.

Bean was charged with battery and disorderly conduct, both as a domestic abuse repeater. The charges arose out of an argument he had with the mother of his child. According to the criminal complaint, Bean grabbed the victim by the hair and pulled her through the residence toward the back steps. Bean then intentionally banged her head against a doorway and attempted to push her down the stairs. Bean also bit the victim on the shoulder.

Bean pleaded guilty to the battery charge, and the disorderly conduct charge was dismissed and read in. The circuit court imposed fifteen months' initial incarceration and fifteen months' extended supervision.

There is no manifest injustice upon which Bean may withdraw the plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, buttressed by the plea questionnaire and waiver of rights form that Bean signed with attached jury instructions for battery, informed Bean of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential punishment. The court informed Bean it could impose the maximum penalties.¹ The court also advised Bean of the potential deportation consequences of his plea as mandated by WIS. STAT. § 971.08(1)(c) (2015-16).²

¹ The circuit court failed to advise Bean that it was not bound by the plea negotiations. However, the plea negotiations did not hold the State to specific recommendations as it was free to make any recommendation it wished at sentencing. Furthermore, counsel represents to this court, based upon discussions with Bean and review of the record, that Bean would be unable to contend that he did not understand the court was not bound by any plea agreement at the time he entered his plea. When informing Bean of the constitutional rights he waived by pleading, the court also failed to advise Bean of the right to remain silent. However, the court verified Bean had gone over all of the constitutional rights on the plea form with his attorney. In addition, counsel represents that Bean would be unable to contend he did not understand the constitutional rights he waived at the time he entered his plea. Bean's failure to respond to the no-merit report forfeits any argument as to his understanding in these regards and therefore no arguable basis to challenge the plea exists.

² References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Bean conceded that the facts in the criminal complaint were true and supported the conviction. The domestic violence repeater enhancer was also supported by sufficient evidence, including a number of documents appended to the complaint relating to multiple prior convictions. The record shows the plea was entered knowingly, voluntarily, and intelligently. *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 Bean's character, the seriousness of the offense and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted Bean's record showed that he was involved in a "very long term and chronic violent relationship" with the victim. The court also stated the violence towards the victim in this case was "brutal," "cruel," and "personal." The court indicated probation was inappropriate and that prison was necessary because of the repeated acts against the same victim and the need to get the message to Bean "out loud and clear this time." It cannot be argued the sentence imposed was so disproportionate to the offense committed as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 183-84, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other issues of arguable merit.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Pamela Moorshead is relieved of further representing Bean in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals