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DISTRICT III

January 17, 2018

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

2017AP265-CRNM State of Wisconsin v. Heath Lansing
2017AP266-CRNM (L. C. Nos. 2014CT86, 2014CF65)

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 Heath Lansing has filed a no-merit report concluding no grounds exist to challenge Lansing's convictions for operating while intoxicated (OWI), fourth offense, and possession of methamphetamine, contrary to WIS. STAT. §§ 346.63(1)(a) and 961.41(3g)(g)

(2011-12), respectively.[1] Lansing was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the records 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. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

In Pierce County Circuit Court case No. 2014CF65, an amended Information charged Lansing with one count of possession of methamphetamine. In Pierce County Circuit Court case No. 2014CT86, the State charged Lansing with OWI and operating with a restricted controlled substance in his blood, both as fourth offenses. Lansing's pretrial motion to suppress evidence was denied after a hearing. In exchange for Lansing's guilty pleas to OWI, fourth offense, and possession of methamphetamine, the State agreed to dismiss the remaining charge in case No. 2014CT86 along with charges in three other cases.

In case No. 2014CF65, the State agreed to recommend three years of probation with twenty-nine days in jail as a condition. With respect to case No. 2014CT86, the State agreed to recommend a concurrent three-year probation term and 185 days of conditional jail time with all but 29 of those days stayed. At sentencing, the State reasoned that probation in conjunction with Lansing's acceptance into drug treatment court in another county "made sense under the circumstance." Defense counsel echoed the reasoning behind the State's sentence recommendation, acknowledging that although Lansing had a tough road ahead, he has "a pretty good opportunity, the way these cases have resolved, to come out of this in great shape." Out of

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

a maximum possible four and one-half-year sentence, the circuit court imposed a sentence consistent with the recommendations made pursuant to the plea agreement.

Any challenge to the circuit court's denial of Lansing's motion to suppress evidence would lack arguable merit. Lansing sought to suppress evidence on grounds the forty-seven-minute stop and investigation by law enforcement was unreasonably prolonged. The motion was denied after a hearing. When reviewing a decision on a motion to suppress evidence, we uphold the circuit court's findings of fact unless they are clearly erroneous, and we review de novo the application of the constitutional principles to those facts. ***State v. Kramer***, 2008 WI App 62, ¶8, 311 Wis. 2d 468, 750 N.W.2d 941. The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and an investigative detention is a seizure under the Fourth Amendment. ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634.

In determining whether a detention is too long to be justified as an investigative stop, courts "examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." ***United States v. Sharpe***, 470 U.S. 675, 686 (1985) (citations omitted). In deciding whether a stop was unreasonably long, courts must consider the "law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes." ***Id.*** at 685.

At the suppression motion hearing, Pierce County Sheriff's deputy Collin Gilles testified that at 2:54 p.m. on November 29, 2013, he stopped Lansing's vehicle for "non-registration, expired registration" and because the registered owner had a suspended license. During his interaction with Lansing, who had been driving the vehicle, Gilles observed that Lansing was

"moving a lot" and making tapping motions with his hands and feet. The deputy further noted that Lansing's pupils were constricted and he was eating Mentos candy. Based on his training and experience, Gilles believed Lansing had taken an illegal drug and, consequently, requested the assistance of a K-9 unit approximately nine minutes into the stop. Gilles then spent time attempting to determine Lansing's current address, as it was necessary to complete citations for the expired registration and operating with a suspended license. Gilles explained that without the address, the citation "won't validate," thus preventing him from printing it or issuing it. Lansing confirmed the address on his license was no longer current, but he could not remember his current address and made several telephone calls in an attempt to determine his address. Lansing ultimately offered his mother's address after calling her to confirm the address.

Deputy Gilles also testified that although the vehicle registration expired in 2013, it had a current registration sticker. Gilles recounted that Lansing indicated he did not know where the sticker came from and he had not paid for it. Gilles, therefore, wanted to remove the sticker from the vehicle but, for safety concerns, waited until another deputy arrived before kneeling down between the cars to scrape off the sticker. The K-9 deputy arrived at approximately 3:41 p.m. and the "sniff" was completed in approximately six minutes. Lansing was asked to exit the vehicle during the "sniff," at which time the deputy administered field sobriety tests. During a pat down, Gilles located baggies with residue that tested positive for methamphetamine.

The circuit court ultimately determined the stop was not unreasonably prolonged, noting that a lot of the delay was "created by Mr. Lansing's inability to provide required and necessary information," combined with "the problem with the registration and taking the sticker off and the need for officer safety" and the need to investigate what the deputy suspected was an impaired

driver. Based on these circumstances, we conclude there would be no arguable merit to any claim that the stop lasted longer than necessary to effectuate the purpose of the stop.

The record discloses no arguable basis for withdrawing Lansing's guilty pleas. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Lansing completed, informed Lansing of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering guilty pleas. The circuit court confirmed that Lansing understood the court was not bound by the terms of the plea agreement, *see* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and found that a sufficient factual basis existed in the criminal complaints to support the conclusion that Lansing committed the crimes charged. Although the circuit court failed to advise Lansing of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), the record indicates Lansing is a United States citizen and therefore not subject to deportation. Any challenge to the pleas on this basis would therefore lack arguable merit. The record shows the pleas were knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Where a defendant affirmatively joins or approves a sentence recommendation, and the defendant is sentenced consistent with that recommendation, the defendant cannot attack the sentence on appeal. ***State v. Scherrieks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced Lansing consistent with the recommendation made pursuant to the plea agreement. In any event, it cannot reasonably be argued that Lansing's sentence is 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 records discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Mark A. Schoenfeldt is relieved of further representing Lansing in these matters. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Acting Clerk of Court of Appeals