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January 18, 2018

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

2016AP2284-CRNM	State of Wisconsin v. Mikel J. Koller (L.C. # 2015CF13)
2016AP2285-CRNM	State of Wisconsin v. Mikel J. Koller (L.C. # 2015CF157)

Before Lundsten, P.J., Sherman 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).

Mikel Koller appeals judgments convicting him of one count of possession of methamphetamine with intent to deliver and one count of felony bail jumping, after he entered

no contest pleas. *See* WIS. STAT. §§ 961.41(1m)(e)1, 946.49(1)(b) (2015-16).¹ Attorney Mark Schoenfeldt has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE § 809.32; *see also Anders v. California*, 386 U.S. 738, 744 (1967). Koller was sent a copy of the report, and 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.

We agree with counsel that there is no arguable basis for Koller to withdraw his pleas. 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 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Koller entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Koller's pleas of no contest, the State agreed to dismiss and read in other charges and drop repeat penalty enhancers on the charges to which he pled. The State agreed to cap its total sentencing recommendation at four years of initial confinement and four years of extended supervision. The circuit court conducted a standard plea colloquy, inquiring into Koller's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other

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

direct consequences of the pleas, and the constitutional rights being waived. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Koller understood that it would not be bound by any sentencing recommendations. In addition, Koller provided the court with signed plea questionnaires. Koller indicated to the court that he understood the information explained on the forms, and is not now claiming otherwise. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Defense counsel stipulated that the court could rely on the facts in the criminal complaints, as amended, as a sufficient factual basis for the pleas. Nothing in the record or the no-merit report gives rise to an arguably meritorious challenge to the factual basis for Koller's pleas. There also is nothing in the record to suggest that counsel's performance was in any way deficient, and Koller has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Koller's sentences also would 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 Koller was afforded an opportunity to comment on the presentence investigation report and to address the court, both personally and through counsel. The court considered the standard sentencing factors and explained their application to this case. See generally *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197.

On the felony bail jumping count, a Class H felony under WIS. STAT. § 946.49(1)(b), the court imposed two years of initial confinement and two years of extended supervision. On the possession of methamphetamine count, a Class F felony under WIS. STAT. § 961.41(1m)(e)1, the court imposed four years of initial confinement and four years of extended supervision. The sentences were ordered concurrent to one another, but consecutive to a Monroe County sentence that Koller was then serving. The sentences imposed were consistent with the joint sentencing recommendation and were well within the penalty ranges permissible by law. *See* WIS. STAT. §§ 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); 973.01(2)(b)6m. and (d)4 (providing maximum terms of seven and one-half years of initial confinement and five years of extended supervision for a Class F felony). Under these circumstances, it cannot reasonably be argued that Koller's sentences are so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. 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 judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mark Schoenfeldt is relieved of any further representation of Mikel Koller 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
Acting Clerk of Court of Appeals