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DISTRICT IV

February 7, 2018

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Colt M. Voge
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You are hereby notified that the Court has entered the following opinion and order:

2016AP1997-CRNM State of Wisconsin v. Colt M. Voge (L.C. # 2016CM9)

Before Blanchard, J.[1]

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).

Colt Voge appeals an amended judgment convicting him of one count of bail jumping and one count of possessing drug paraphernalia. Assistant State Public Defender Megan Sanders-Drazen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16).

STAT. RULE 809.32 (2015-16);[2] *see also* ***Anders v. California***, 386 U.S. 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 Voge's pleas and sentences. Voge 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, 249-50, 251 n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Voge entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Voge's pleas in this case, the State agreed to dismiss and read in five misdemeanor charges in two other cases. The parties further agreed to make a joint recommendation for a two-year term of probation, with conditions to include that Voge pay restitution and not contact the victim of the read-in offenses, and that he undergo an AODA assessment and follow all treatment recommendations.

The circuit court conducted a standard plea colloquy, inquiring into the defendant's ability to understand the proceedings and the voluntariness of his plea decisions, and further

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

exploring the defendant'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; and ***Bangert***, 131 Wis. 2d at 266-72. The court made sure the defendant understood that it would not be bound by any sentencing recommendation, even if it was a joint recommendation. In addition, Voge provided the court with a signed plea questionnaire, with an attached sheet setting forth the elements of the charged offenses. Voge indicated to the court that he had gone over the form with his attorney and understood the information explained on it, and he is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaint—namely, that police had discovered a marijuana smoking device with THC residue on it in Voge's car during a traffic stop, when he was out on bond for possession of THC and OWI—provided a sufficient factual basis for the pleas. Voge indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Voge has not alleged any other facts that would give rise to a manifest injustice. Therefore, Voge's pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Voge's probation would also lack arguable merit because the court adopted the parties' joint recommendation and imposed concurrent two-year terms of probation. *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); *see also* WIS. STAT. §§ 946.49(1)(a) (classifying bail jumping as a Class A misdemeanor); 961.573(1) (classifying

possession of drug paraphernalia as a misdemeanor); 973.09(2)(a)1m. (setting term of probation for Class A misdemeanor between six months and one year); 973.09(2)(a)1r. (setting term of probation for unclassified misdemeanors at not more than one year); and 973.09(2)(a)2. (increasing available term of probation by one year when defendant is convicted of two to four misdemeanors at the same time).

The court also ordered restitution in the amount of $7,965.61. That amount was fully supported by testimony and receipts at a restitution hearing.

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
Acting Clerk of Court of Appeals