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February 21, 2018

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

2016AP2313-CRNM State of Wisconsin v. Craig J. Ganther (L.C. # 2015CM406)
2016AP2314-CRNM State of Wisconsin v. Craig J. Ganther (L.C. # 2015CM410)

Before Kloppenburg, 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).

Craig Ganther appeals two judgments convicting him, based upon no contest pleas, of disorderly conduct as a domestic abuse incident, battery as a domestic abuse incident, and disorderly conduct by use of a dangerous weapon. Assistant State Public Defender Kara Mele

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2015-16); *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 Ganther's pleas and sentences. Ganther 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, I conclude that there are no arguably meritorious appellate issues.

Competence

Although counsel does not address the issue, I note that the circuit court ordered that a competency evaluation be performed. *See* WIS. STAT. § 971.13(1) ("No person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures."); WIS. STAT. § 971.14(2)(a) (court shall "appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant," whenever the issue of competency is raised).

Licensed psychologist Michael Galli, Ph.D. performed the evaluation and concluded that Ganther possessed the substantial capacity to understand the circuit court proceedings and to be able to assist in his own defense. Based upon Galli's report, the parties waived presentation of further evidence and stipulated that Galli was competent to proceed. Based on the stipulation, the court found Galli competent to proceed.

Under WIS. STAT. § 971.14(4)(b), when "the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall promptly determine the defendant's competency … on the basis of the report filed [by the

court-appointed expert]." Therefore, the record reveals no basis to challenge Ganther's competency to proceed.

Pleas

Next, I 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, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

In exchange for Ganther's pleas, the State agreed to dismiss and read in a bail jumping charge. The circuit court conducted a plea colloquy, inquiring into Ganther's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Ganther'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; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Ganther understood that it would not be bound by any sentencing recommendations. In addition, Ganther provided the court with signed plea questionnaires, with attached sheets showing the elements of the charged offenses. Ganther indicated to the court that he had gone over the forms with his attorney and understood them, and he is not now claiming to have misunderstood any of the information on the forms. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaints—namely, that on one occasion, Ganther pushed his ex-girlfriend against a wall and told her to "get the fuck out" when she had come over to collect some belongings she had left in the apartment, and that on another occasion, Ganther brandished a steel pipe and made threats against a man who was helping Ganther's ex-girlfriend move her things out of the apartment—provided a sufficient factual basis for the pleas. Ganther indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance with respect to the plea bargaining process was in any way deficient. Ganther has not alleged any other facts that would give rise to a manifest injustice. Therefore, Ganther's pleas were valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Sentences

A challenge to Ganther's sentences would also 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 Ganther was afforded an opportunity to address the circuit court, both personally and through counsel. The State asked for probation while the defense asked for fines only. The court then made the following comments:

> I believe based upon Mr. Ganther's personal characteristics, as well as the gravity of the offenses, that probation is called for in these matters. And I believe that Mr. Ganther would benefit from supervision.

Although the court's sentencing remarks were very brief, the court did link the terms of probation it was imposing to Ganther's need for supervision, and it implied that it had taken the gravity of the offenses into account before concluding that a fine would be insufficient. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197 (court is to consider standard sentencing factors and explain their application to the case).

The circuit court then imposed three concurrent two-year terms of probation, and authorized the probation department to discharge Ganther after only one year if Ganther satisfied the terms of probation. The terms of probation included no contact with either victim, paying court costs and supervision fees, obtaining any counseling ordered by the department and following treatment recommendations.

The terms of probation were within the applicable penalty ranges. *See* WIS. STAT. §§ 940.19(1) (classifying battery as a Class A misdemeanor); 947.01(1) (classifying disorderly conduct as a Class B misdemeanor); 973.09(2)(a)1.b. (setting original term of probation for a misdemeanor that was an act of abuse at not less than six months nor more than two years); 973.09(2)(a)1r. (setting original term of probation for otherwise unspecified Class B misdemeanors at not more than one year); and 973.09(2)(a)2. (increasing the maximum term of probation for each misdemeanor count by one year when the defendant is convicted of two to four misdemeanors at the same time).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the terms of probation imposed here were not "so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances."

State v. Grindemann, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted).

Upon an independent review of the record, I have found no other arguable basis for reversing the judgment of conviction. I 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 counsel is relieved of any further representation of the defendant in these matters pursuant to WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals