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July 16, 2018

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

2017AP854-CRNM State of Wisconsin v. Alexander C. Canales (L.C. # 2015CF4435)

Before Blanchard, Kloppenburg and Fitzpatrick, 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).

Attorney Hans P. Koesser, appointed counsel for Alexander C. Canales, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether

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

there would be arguable merit to a challenge to Canales' plea or sentencing or the circuit court's rulings on Canales' motions to suppress evidence and exclude expert testimony. Canales was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Canales was charged with possession of a firearm by a felon, as a repeater, and keeping a drug house, as a second or subsequent offense and as a repeater. Pursuant to a plea agreement, Canales pled guilty to possession of a firearm by a felon, as a repeater, and the charge of keeping a drug house was dismissed and read-in for sentencing. The court sentenced Canales to five years of initial confinement and four years of extended supervision, consecutive to another sentence Canales was currently serving.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Canales' plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Canales signed, satisfied the court's mandatory duties to personally address Canales and determine information such as Canales' understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Canales' plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Canales' sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, Canales was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Canales' character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Canales to five years of initial confinement and four years of extended supervision, consecutive to Canales' then-current sentence. The sentence was within the maximum Canales faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (citation omitted)). We discern no erroneous exercise of the court's sentencing discretion and no other basis to challenge the sentence imposed by the circuit court.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to the circuit court's decisions on Canales' motions to suppress evidence and exclude expert testimony. We agree with the analysis set forth in the no-merit report as to why any challenge based on the circuit court's decisions would be wholly frivolous.

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.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hans P. Koesser is relieved of any further representation of Alexander C. Canales in this matter. *See* 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