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DISTRICT IV

August 31, 2018

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

2016AP1762-CRNM	State of Wisconsin v. Joshua Dekota Tidwell (L.C. # 2014CF641)
2016AP1763-CRNM	State of Wisconsin v. Joshua Dekota Tidwell (L.C. # 2015CF454)
2016AP1764-CRNM	State of Wisconsin v. Joshua Dekota Tidwell (L.C. # 2015CF743)

Before Lundsten, P.J., 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).

Joshua Tidwell appeals three judgments convicting him of delivery of methamphetamine, two counts of felony bail jumping, obstructing an officer, and disorderly conduct as domestic abuse—each as a repeat offender. Attorney Catherine Malchow has filed a no-merit report

seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);[1] *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 the validity of Tidwell's pleas and sentences. Tidwell 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. *See* ***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.

There were two plea hearings. At the first, Tidwell entered a guilty plea to one count of delivery of methamphetamine as a repeater, pursuant to a negotiated plea agreement that was presented in open court. In exchange for Tidwell's plea, the State agreed to dismiss and read in two other felony drug charges, and to request a PSI with both parties free to argue at sentencing. At the second hearing, Tidwell entered guilty pleas in one case to felony bail jumping, obstructing an officer, and disorderly conduct as a domestic dispute, each as a repeater, and to an additional bail jumping charge as a repeater in another case. In exchange, the State dismissed

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

additional charges of battery, possession of methamphetamine and possession of methamphetamine with intent to deliver, possession of THC, two counts of possession of drug paraphernalia, and multiple bail jumping counts.

At both hearings, the circuit court conducted plea colloquies, inquiring into Tidwell'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 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 Tidwell understood that the court would not be bound by any sentencing recommendations. In addition, Tidwell provided the court with signed plea questionnaires. Tidwell is not claiming that he misunderstood any of the information stated on those forms, and the circuit court could properly incorporate them into its colloquies. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

By prior order, we placed this case on hold to await an opinion determining whether a defendant, who was not advised at the time of the plea that he or she faced multiple mandatory DNA surcharges, has grounds for plea withdrawal. This court has now issued a published decision concluding that recent decisions by the Wisconsin Supreme Court defeat any such claim. *See* ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __.

The facts set forth in the complaints and acknowledged by Tidwell provided a sufficient factual basis for the pleas. Tidwell also admitted his status as a repeat offender in open court. Tidwell indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Tidwell has not alleged any other facts that

would give rise to a manifest injustice. Therefore, Tidwell'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.

A challenge to Tidwell'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. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Tidwell was afforded an opportunity to comment on the PSI and a supplement to the PSI, and to address the court both personally and through counsel. The court proceeded to consider the standard sentencing factors and explained the application of those factors to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. With respect to Tidwell's character, the court characterized Tidwell as his own worst enemy and a person who had squandered multiple opportunities to leave behind his life as "Bama, the drug dealer." Regarding the severity of the offenses, the court noted that Tidwell's actions were damaging to the community, as well as to himself. The court also observed that Tidwell's actions in committing additional crimes and absconding while on bail had left the court with little choice but to impose a prison sentence. The court concluded that six years in prison would take Tidwell into his thirties but give him one last opportunity to "come out a different guy."

The court then sentenced Tidwell to four years of initial confinement and five years of extended supervision on the methamphetamine count; to two years of initial confinement and

one year of extended supervision on the first bail jumping count; to one and a half years of initial confinement and six months of extended supervision on each of the obstruction and disorderly conduct counts; and to two years of initial confinement and two years of extended supervision on the second bail jumping count. The sentences in the second two cases were all to be served concurrently to one another, but consecutive to the methamphetamine count in the first case. The court also awarded 191 days of sentence credit; ordered restitution in the amount of $40 for the controlled drug buy; and imposed standard costs and conditions of supervision. The judgments of conviction show that the court determined Tidwell to be eligible for both the challenge incarceration program and the substance abuse program.

The components of the bifurcated sentences were within the applicable penalty ranges and, as structured, the total imprisonment period was well below the maximum exposure Tidwell faced. *See* WIS. STAT. §§ 961.41(1)(e)1. (classifying delivery of three grams or less of methamphetamine as a Class F felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony); 939.62(1)(c) (increasing maximum term of imprisonment for offense otherwise punishable by more than ten years by six additional years for habitual criminality); 946.49(1)(b) (classifying felony bail jumping as a Class H felony); 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); 939.62(1)(b) (increasing maximum term of imprisonment for offense otherwise punishable by one to ten years by four additional years for habitual criminality); 946.41(1) (classifying obstructing an officer as a Class A misdemeanor); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 947.01(1) (classifying disorderly conduct as a Class B misdemeanor); 939.51(3)(b) (providing maximum imprisonment

of ninety days for a Class B misdemeanor); 939.62(1)(a) (increasing maximum term of imprisonment for offense otherwise punishable by less than one year to two years for habitual criminality) (all 2013-14).

There is a presumption that a sentence "'well within the limits of the maximum sentence'" is not unduly harsh, and the sentences imposed here are 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.'" *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted). That is particularly true when taking into consideration the amount of additional sentence exposure Tidwell avoided on the read-in offenses.

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 Catherine Malchow is relieved of any further representation of Joshua Dekota Tidwell 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