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DISTRICT III

October 2, 2018

To:

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

2017AP693-CRNM State of Wisconsin v. Wayne R. Mueller (L. C. No. 2016CF3)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Wayne Mueller has filed a no-merit report concluding there is no basis to challenge Mueller's conviction for delivery of narcotics. Mueller was advised of his right to respond and has failed to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable issue that could be raised on appeal and summarily affirm.

A criminal complaint alleged that Mueller delivered narcotics to a confidential informant. Mueller pleaded guilty. The circuit court imposed and stayed three years' initial confinement and three years' extended supervision, and ordered four years' probation with nine months' jail time as a condition.

There is no manifest injustice upon which Mueller may withdraw his plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). Our independent review of the record confirms counsel's analysis of whether the circuit court adequately informed Mueller of the rights he waived by pleading guilty, and of the elements of the offense. The plea colloquy, buttressed by the plea questionnaire and waiver of rights form signed by Mueller, with attachments, also informed Mueller of the potential punishment. The court specifically informed Mueller that it was not bound by the parties' agreement and could impose the maximum penalties. Although not addressed by the no-merit report, the court also advised Mueller of the potential deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c) (2015-16).¹ Mueller also conceded the criminal complaint supplied a sufficient factual basis supporting the conviction. Moreover, the court confirmed there was nothing about Mueller's medication that made it difficult for him to understand the proceedings. The record demonstrates the plea was entered knowingly, intelligently, and voluntarily. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986).

The no-merit report also indicates Mueller "takes issue with the sentencing terms" regarding his jail sentence because the nine months imposed exceeded a potential joint

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

recommendation of six months' jail. We agree with counsel's analysis of this issue. Mueller declined to enter into the unrealized joint recommendation, and he argued at sentencing the circuit court should follow the recommendation of the presentence investigation report "that there not be any upfront jail time" As mentioned in the no-merit report, the court also advised Mueller at the plea hearing it could impose the maximum allowable punishment. The court's sentence was well within the maximum allowable by law and thus presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

Although not addressed in the no-merit report, there is no other basis for challenging the circuit court's sentencing discretion. The court considered the proper sentencing factors, including Mueller's character, the seriousness of the offense, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Andrew H. Morgan is relieved of further representing Wayne Mueller 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