OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

November 15, 2018

To:

Hon. Ellen K. Berz
Circuit Court Judge
Br. 11, Rm. 5103
215 S. Hamilton St.
Madison, WI 53703

Paul W. Humphrey
Asst. District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Toby L. Adams 376446
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Andrew Hinkel
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2017AP1857-CRNM State of Wisconsin v. Toby L. Adams (L.C. # 2016CF1480)

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).

Toby Adams appeals a judgment convicting him of one count of attempted armed robbery and one count of armed robbery as a party to a crime. Attorney Andrew Hinkel has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2015-16);[1]

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

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 the pleas and sentences. Adams was sent a copy of the report and 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, 249-51, n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Adams entered guilty pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Adams's pleas, the State agreed to dismiss but read in a count of misdemeanor battery. The circuit court conducted a standard plea colloquy, inquiring into Adams'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* ***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 did not ascertain on the record that Adams understood that the court would not be bound by any sentencing recommendations, as required under ***State v. Hampton***, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. However, the plea agreement did not involve a

sentencing recommendation. Therefore, there would be no arguable merit to a claim that this defect in the colloquy presents a manifest injustice warranting plea withdrawal. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441.

Adams also provided the court with a signed plea questionnaire. Adams indicated to the court that he understood the information explained on that form, 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). Adams stipulated, through his attorney, that the complaint established a factual basis for the pleas. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Adams has not alleged any other facts that would give rise to a manifest injustice. Therefore, the 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.

A challenge to Adams's sentences also would lack arguable merit. On Count One, attempted armed robbery, the court imposed two years of initial confinement and two years of extended supervision. Adams faced up to five years of initial confinement and two years and six months of extended supervision on that count. *See* WIS. STAT. §§ 943.32(1)(a); 939.32; 939.50(3)(e); 973.01(2)(b)5., (d)4. On Count Three, armed robbery as a party to a crime, the court imposed six years of initial confinement and three years of extended supervision, to run consecutive to the sentenced imposed on Count One. Adams faced up to ten years of initial confinement and five years of extended supervision on Count Three. *See* WIS. STAT. §§ 943.32(1)(a); 939.50(3)(e); 973.01(2)(b)5., (d)4. The sentences imposed were well within the ranges permitted by statute.

The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. We agree with counsel that there would be no arguable merit to arguing that Adams's sentences were unduly harsh or the product of an erroneous exercise of discretion.

Our independent review of the record presents no other arguably meritorious issues for appeal.

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.

Sheila T. Reiff
Clerk of Court of Appeals