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DISTRICT II

November 28, 2018

To:

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

2018AP398-CRNM State of Wisconsin v. Rodolfo Rebollar (L.C. #2015CF738)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Rodolfo Rebollar appeals a judgment convicting him of two counts of possession with intent to deliver cocaine (>40 grams), one as party to a crime (PTAC). His appointed appellate counsel, Marcella De Peters, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32

(2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Rebollar does not speak or read English but is fluent in Spanish. He filed a response in Spanish; a certified translator filed an English translation of his response. Upon consideration of the no-merit report and response and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment, as we discern no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

City of Racine police obtained a search warrant for a particular vehicle and residence using information gained from an informant. While surveilling the residence, the officers saw the described car leave and stopped it. The driver, later found to be Rebollar, gave police a Mexican ID with a false name. Police searched him and found a large chunk (255.4 grams) of cocaine in his waistband, four baggies (2.8 grams total) of cocaine in his shirt pocket, cash, and three working cell phones. Inside the residence, police found two men, 870.6 grams of cocaine in various areas in the kitchen, 402.5 grams of marijuana, a scale and baggies, a plastic cup that contained 29.7 grams of a white powdery substance, a gun, and a substantial sum of money.

Rebollar was charged with one count each of PTAC possession with intent to deliver cocaine (>40 grams), possession with intent to deliver cocaine (>40 grams), PTAC possession with intent to deliver marijuana (>200 grams), and PTAC maintaining a drug-trafficking place. He pled guilty to the two cocaine charges. The other two counts were dismissed and read in. The circuit court sentenced him to five years' initial confinement and three years' extended supervision on each count, to be served consecutively. This no-merit appeal followed.

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

The no-merit report addresses whether meritorious arguments could be made that (1) Rebollar should be allowed to withdraw his guilty pleas because they were not knowingly, voluntarily, and intelligently entered, or (2) the circuit court erroneously exercised its discretion in sentencing him. As our review of the record satisfies us that the no-merit report properly and thoroughly analyzes these issues as without merit, we address them no further.

Rebollar raises a single issue in his response: he asserts he was wrongly charged with PTAC maintaining a drug-trafficking place because he was “caught” only in the car, and “the house and the drugs in it were not mine.” He contends he repeatedly told his defense counsel “that we needed to clear this up” but counsel did not do so, and that appellate counsel told him the issue would have no merit. Appellate counsel is correct.

Keeping or maintaining a drug-trafficking place does not require ownership of the place, only that one exercises management or control of it. *See* WIS JI—CRIMINAL 6037B, “Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances— [WIS. STAT.] § 961.42”; *cf.* WIS JI—CRIMINAL 1570, “Keeping a Place of Prostitution.” Rebollar acknowledged to the presentence investigation report writer that he had a “large chunk” of cocaine on him, but said he was only taking it somewhere to get rid of it, as he did not want it “in the house.” He further revealed that it was not 100 percent cocaine, as it was cut with some type of food supplement.

In addition, the charge of maintaining a drug-trafficking place was dismissed. The court advised Rebollar that he would not be pleading to or found guilty of either read-in charge, but that it could consider the allegations at sentencing. The State is prohibited from any future

prosecution of the read-in charge. *State v. Straszkowski*, 2008 WI 65, ¶93, 310 Wis. 2d 259, 750 N.W.2d 835.

Further, Rebollar waived his preliminary hearing—but only after telling the court through a Spanish interpreter that he understood he could present witness testimony at the hearing in support of his defenses, that, by waiving the hearing, he was agreeing that the State could prove probable cause, and that he was making the waiver decision freely and voluntarily. If he now is claiming that insufficient probable cause supported his bindover on that charge, his guilty plea waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the plea, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). After conviction, there is no remedy for errors at a preliminary hearing. *See State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991). Thus, Rebollar could not mount a non-frivolous challenge on this issue.

Our review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved from further representing Rebollar in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that the clerk of this court shall, on the date of this order, mail to Rebollar both the Spanish-language version and the English-language version of the opinion and order summarily affirming his conviction in this matter.

IT IS FURTHER ORDERED that the English-language version of the opinion and order summarily affirming Rebollar's conviction is the official version for all purposes.

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

Sheila T. Reiff
Clerk of Court of Appeals