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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 III

May 14, 2019

To:

Hon. Gregory J. Strasser
Circuit Court Judge
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Shirley Lang
Clerk of Circuit Court
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

Theresa Wetzsteon
District Attorney
500 Forest St.
Wausau, WI 54403-5554

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

Bret M. Harstvedt
4311 Schofield Ave.
Schofield, WI 54476

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

2018AP550-CRNM State of Wisconsin v. Bret M. Harstvedt
2018AP551-CRNM (L. C. Nos. 2016CF1160, 2017CF569)

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 Bret Harstvedt has filed a no-merit report concluding no grounds exist to challenge Harstvedt's convictions for felony bail jumping; possession with intent to deliver 200 grams or less of tetrahydrocannabinols ("THC"); and operating a motor vehicle while intoxicated ("OWI"), third offense, with all three crimes as a repeater. Harstvedt was informed

of his right to file a response to the no-merit report and has not responded. Upon our independent review of the records as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21 (2017-18).[1]

The State charged Harstvedt with five crimes in two Marathon County Circuit Court cases—disorderly conduct as an act of domestic abuse; possession with intent to deliver 200 grams or less of THC; two counts of felony bail jumping; and OWI, third offense, all five counts as a repeater. In exchange for Harstvedt's no-contest pleas to one count of felony bail jumping, possession with intent to deliver 200 grams or less of THC, and OWI, third offense, all with the repeater enhancer, the State agreed to recommend dismissal and read in of the remaining counts. The State also agreed to join in defense counsel's recommendation for concurrent probation terms totaling three years for the bail jumping and possession with intent to deliver THC offenses, and ninety days of concurrent jail time for the OWI offense. Out of a maximum possible fifteen-and-one-half-year sentence, the circuit court imposed sentences consistent with the joint recommendation.

The record discloses no arguable basis for withdrawing Harstvedt's no-contest pleas. Our review of the record confirms that the circuit court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. One issue requires further discussion. When describing the

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

penalties associated with the OWI charge, the circuit court properly informed Harstvedt that he could be imprisoned for not less than forty-five days nor more than one year in jail. The court then informed Harstvedt that the repeater enhancer could "increase the imprisonment amount to another two years." The repeater enhancer for this offense, however, could increase the maximum term of imprisonment "to not more than 2 years." *See* WIS. STAT. § 939.62(1)(a).

Even assuming Harstvedt interpreted this to mean he faced a total of three years' imprisonment when, in fact, he faced a total of two years with the repeater, the circuit court's one-year penalty overstatement does not constitute arguable grounds for plea withdrawal. *See* ***State v. Cross***, 2010 WI 70, ¶4, 326 Wis. 2d 492, 786 N.W.2d 64 ("[W]here a defendant pleads guilty with the understanding that he [or she] faces a higher, but not substantially higher, sentence than the law allows, the circuit court has still fulfilled its duty to inform the defendant of the range of punishments."). There is no arguable merit to a claim that Harstvedt's pleas were anything other than knowing, intelligent, and voluntary. Moreover, the no-merit report suggests that Harstvedt waives any challenge to the legitimacy of his pleas, noting Harstvedt "does not wish to risk withdrawing any of his pleas." *See* ***State v. Dielke***, 2004 WI 104, ¶26, 274 Wis. 2d 595, 682 N.W.2d 945 (where defendant successfully withdraws plea, any agreements made under plea agreement may be rescinded and the parties returned to the positions they occupied at the time they believed they had entered into valid plea agreement). Harstvedt has not disputed this representation.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Here, the court sentenced Harstvedt consistent with the parties' joint recommendation. Because Harstvedt affirmatively approved the sentence, he cannot attack it on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). In any

event, it cannot reasonably be argued that Harstvedt's sentences are so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the records discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Timothy T. O'Connell is relieved of further representing Bret Harstvedt in these matters. *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