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September 10, 2020

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

2019AP724-CRNM State of Wisconsin v. Joenellie C. Martinez (L.C. # 2017CF1444)

Before Fitzpatrick, P.J., Blanchard, and Nashold, 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).

Joenellie Martinez appeals a judgment convicting him of second-degree recklessly endangering safety, after he entered a guilty plea. Attorney Len Kachinsky has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2017-18);¹ *see also*

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

Anders v. California, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of the plea and sentence. Martinez 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, 260, 274-75, 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.

Martinez entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Martinez's plea, the State agreed to a joint sentencing recommendation of two years of initial confinement. The parties were free to argue as to the amount of extended supervision to be imposed.

The circuit court conducted a standard plea colloquy, inquiring into Martinez'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; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure that Martinez understood that the court would not be bound by any sentencing recommendations. In addition, Martinez's counsel provided the court with a signed plea

questionnaire. Martinez indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Martinez confirmed on the record that there was a sufficient factual basis for the plea. There is nothing in the record to suggest that the performance of Martinez’s counsel was in any way deficient, and Martinez has not alleged any other facts that would give rise to a manifest injustice. Therefore, his plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶¶18, 43-44 & n.17, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Martinez’s sentence also would 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. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Martinez was afforded an opportunity to comment on the presentence investigation report and to address the court personally at the sentencing hearing. The court considered the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court noted that the criminal conduct was “extremely grave.” With respect to character, the court stated that Martinez had accepted responsibility for the charge to which he pled, but also found that he had shown a lack of candor in the proceedings. The court concluded that a prison term is necessary to protect the public.

The court then sentenced Martinez to five years of initial confinement and two years of extended supervision, to be served consecutive to any other sentence Martinez was serving. Although the court did not follow the joint sentencing recommendation, it imposed a sentence within the range allowed by law and explained on the record its reason for doing so, emphasizing the gravity of the offense. *See* WIS. STAT. §§ 941.30(2) (classifying second-degree reckless endangerment of safety as a Class G felony); 973.01(2)(b)7. and (d)4. (providing maximum terms of five years of initial confinement and five years of extended supervision for a Class G felony). We are satisfied that the record demonstrates a proper exercise of the circuit court's sentencing discretion, and we agree with counsel that any claim to the contrary would be without arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment 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.

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

IT IS FURTHER ORDERED that attorney Len Kachinsky is relieved of any further representation of Joenellie Martinez 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