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DISTRICT IV

November 19, 2020

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

2019AP935-CRNM State of Wisconsin v. Damien Shontell Hewlett (L.C. # 2016CF89)

Before Blanchard, Kloppenburg, 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).

Damien Hewlett appeals a judgment convicting him, after a guilty plea, of one count of armed robbery as a party to a crime. His appointed counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Hewlett

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

was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must demonstrate either that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea or that the plea involved 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, 283, 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.

Hewlett entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Hewlett's plea, the State agreed to dismiss and read in other charges. The circuit court conducted a standard plea colloquy, inquiring into Hewlett's ability to understand the proceedings and the voluntariness of his plea decisions. The court further explored Hewlett's 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 circuit court made sure Hewlett understood that it would not be bound by any sentencing recommendations.

In addition, Hewlett provided the circuit court with a signed plea questionnaire. He indicated to the circuit court that he understood the information explained on that form, and is not now claiming otherwise. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d

627 (Ct. App. 1987) (circuit court can accurately assess defendant's understanding of the defendant's waiver of his or her constitutional rights by employing written waiver of rights form in lieu of personal colloquy). The circuit court found that the complaint provided a sufficient factual basis for the plea. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Hewlett 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, 294 Wis. 2d 62, 716 N.W.2d 886.

Any argument that the circuit court erroneously exercised its sentencing discretion 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 circuit court imposed a sentence of twenty-one-and-one-half years of initial confinement and thirteen-and-one-half years of extended supervision, concurrent to any sentence that Hewlett was then serving. The sentence was within the applicable penalty range. *See* WIS. STAT. §§ 943.32(2) (classifying armed robbery as a Class C felony); 973.01(2)(b)3 and (d)2 (providing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony). The circuit court expressly considered the facts relevant to the standard sentencing factors and objectives, including the severity of the offense, Hewlett's character and criminal history, and the need for deterrence and rehabilitation. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. Under the circumstances, the sentence imposed here was not “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and

violate the judgment of reasonable people concerning what is right and proper under the circumstances.”” *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis.2d 632, 648 N.W.2d 507 (quoted source omitted). Accordingly, we agree with counsel that any challenge to the circuit court’s exercise of sentencing discretion would be without arguable merit.

Upon an independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. 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. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Pablo Galaviz, Jr., is relieved of any further representation of Damien Hewlett 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