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DISTRICT III

February 9, 2021

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

2019AP1724-CRNM State of Wisconsin v. Erick Julian Morgan
(L. C. No. 2015CF440)

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).

Erick Morgan appeals a judgment convicting him, after a guilty plea, of one count of possession of narcotics with intent to deliver, as a party to a crime. *See* WIS. STAT.

§§ 961.41(1m)(a), 939.05 (2017-18).[1] His appointed counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Morgan was provided a copy of the report, but he 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 either show that the plea colloquy was defective in a manner that resulted in the defendant entering an unknowing, unintelligent or involuntary 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 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Morgan was charged with possession of fentanyl with intent to deliver, as a party to a crime. He entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Morgan's plea, the State agreed to cap its sentencing recommendation at four years of initial confinement and five years of extended supervision, concurrent to a sentence that Morgan was serving in Minnesota. The circuit court conducted a standard plea colloquy. The court inquired into Morgan's ability to understand the proceedings and the voluntariness of his plea decisions, the nature of the charges, the penalty ranges, other

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

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; ***Bangert***, 131 Wis. 2d at 266-72. The court made efforts to ensure Morgan understood that it could impose the maximum penalty for the offense to which he was pleading.

In addition, Morgan provided the circuit court with a signed plea questionnaire. He 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). The court found that the record 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 Morgan 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. *See* ***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 court imposed a sentence of four years of initial confinement and four years of extended supervision, concurrent with a sentence Morgan was serving in Minnesota. The sentence was within the applicable penalty range. *See* WIS. STAT. §§ 943.32(2) (classifying possession with intent to deliver schedule I and II narcotics as a Class E felony); 973.01(2)(b)5. and (d)4. (providing maximum terms of ten years of initial confinement and five years of extended supervision for a Class E felony).

The circuit court considered the standard sentencing factors and objectives, including the severity of the offense, Morgan's character and criminal history, and the need to protect the public. *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." *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Accordingly, we agree with counsel that any challenge to the court's exercise of sentencing discretion would be without arguable merit.

Upon an independent review of the record, this court has found no other arguable basis for reversing Morgan's 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 Len Kachinsky is relieved of any further representation of Erick Morgan 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