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DISTRICT I/III

January 8, 2013

To:

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

2012AP1723-CRNM State v. Nansaw Money Winston
2012AP1724-CRNM (L.C. Nos. 2010CF5158, 2010CF5185)

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

Counsel for Nansaw Money Winston has filed a no-merit report concluding there is no basis to challenge Winston's convictions for armed robbery, as party to a crime, first-degree reckless injury and possession of a firearm by a felon. Winston was advised of his right to respond and has not responded. Upon our independent review of the record 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 and summarily affirm.

These matters involve two robbery offenses that occurred on the same day in Milwaukee. On the morning of October 7, 2010, an individual was walking his dogs when Winston came out of an alley and asked the victim, “Do you have any bread on you?” When the victim replied that he did not, Winston shot him twice, causing extensive injuries. For this incident, Winston was charged with first-degree reckless injury by use of a deadly weapon, attempted armed robbery and possession of a firearm by a felon.

That same day, Winston and a co-actor approached a group of people and demanded at gunpoint that they “get the fuck on the ground.” When a woman holding a three-year-old baby refused, Winston said, “We don’t give a fuck about your baby.” Winston and the co-actor then went through the victims’ pockets, which produced seventy dollars. The victims were then told to start running, and Winston’s co-actor fired at the fleeing group. For this incident, Winston was charged with armed robbery as a party to a crime, and possession of a firearm by a felon, both as repeaters.

Winston pleaded guilty to first-degree reckless injury and possession of a firearm by a felon in the first case, and the State agreed to recommend dismissal of the dangerous weapon enhancer and dismiss and read in the attempted armed robbery charge. In the latter case, Winston pled guilty to armed robbery, and the State agreed to recommend dismissal and read in of the felon in possession of a firearm charge and to dismiss the repeater enhancer from the armed robbery charge.

The circuit court imposed a sentence of five years’ initial incarceration and four years’ extended supervision on the armed robbery count; ten years’ initial confinement and five years’ extended supervision on the first-degree reckless injury count; and four years’ initial

confinement and four years' extended supervision on the possession of a firearm by a felon count.

There is no manifest injustice upon which Winston could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights forms, informed Winston of the constitutional rights he waived by pleading, the elements of the offenses and the potential penalties. An adequate factual basis supported the convictions. The court specifically advised Winston that it was not bound by the parties' agreement and could impose the maximum penalties. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of non-jurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered the proper factors, including Winston's character, the seriousness of the offenses and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). Regarding the seriousness of the offenses and the need to protect the public, the court stated the shooting victim did not deserve "to be shot and have to live with nine surgeries, 72 days in the hospital, a colostomy bag" simply for replying that he had no money. The court also emphasized the aggravated nature of the crimes beginning at 8 a.m., when Winston "shoots somebody and then he goes and participat[es] in another robbery." The court appropriately concluded Winston was "a danger to anyone in the community right now" The sentence imposed was far less than the maximum and therefore presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other issues of arguable merit.
Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT.
RULE 809.21 (2009-10).

IT IS FURTHER ORDERED that attorney Matthew Pinix is relieved of further
representing Winston in these matters.

Diane M. Fremgen
Clerk of Court of Appeals