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January 4, 2013

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

2011AP2743-CRNM	State of Wisconsin v. Christopher M. Ferguson (L.C. # 2009CF5787)
2011AP2744-CRNM	State of Wisconsin v. Christopher M. Ferguson (L.C. # 2010CF1879)
2011AP2745-CRNM	State of Wisconsin v. Christopher M. Ferguson (L.C. # 2010CF1880)

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

Christopher Ferguson appeals judgments convicting him of multiple counts of burglary, following his guilty pleas, and imposing sentence. Attorney Carl Chesshir has filed a no-merit report seeking to withdraw as appellate counsel. *See Anders v. California*, 386 U.S. 738, 744

(1967); WIS. STAT. RULE 809.32 (2009-10).¹ The no-merit report addresses the validity of Ferguson's guilty pleas and sentencing. Ferguson was sent 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.

In late 2009 and early 2010, the State charged Ferguson with five counts of burglary, one count of attempted burglary, and one count of entry into a locked vehicle. Pursuant to a plea agreement, Ferguson pled guilty to the five burglary counts and the State dismissed and read in the attempted burglary and entry into a locked vehicle counts. Additionally, the State limited its sentencing recommendation to a global sentence of five years of initial incarceration and five years of extended supervision as to all of the convictions. The court sentenced Ferguson to a total of nine years of initial confinement and five years of extended supervision.

First, there is no arguable basis in the record for Ferguson to withdraw his guilty pleas. After sentencing, a defendant may only withdraw a guilty plea to correct a manifest injustice such as ineffective assistance of counsel, an involuntary plea, or the prosecutor's failure to follow the plea agreement. *See State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication that any such manifest injustice occurred here.

Before accepting Ferguson's guilty pleas, the circuit court conducted a plea colloquy that established Ferguson's understanding of the burglary charges, the potential penalties following conviction and other consequences of the pleas, and the constitutional rights he would be waiving. *See* WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161,

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

765 N.W.2d 794; *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The court also reviewed the plea questionnaire and waiver of rights forms that Ferguson had signed, establishing that Ferguson had reviewed the forms with his attorney and understood them. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The court also established Ferguson's ability to understand the proceedings, that the plea was entered voluntarily and with the understanding that the court was not bound by the plea agreement, and that Ferguson had sufficient time to discuss his cases with his attorney. *See Hoppe*, 317 Wis. 2d 161, ¶18. The facts set forth in the complaints provided a sufficient factual basis for the pleas. The State followed the plea agreement in its sentencing recommendations. We perceive no defect in the guilty pleas on the record before us. Thus, the pleas were valid and operated to waive all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Additionally, a challenge to Ferguson's **Error! Reference source not found.** would lack arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Ferguson was afforded the opportunity to address the court prior to sentencing. The State recommended a global sentence of five years of initial confinement and five years of extended supervision, in accord with the plea agreement, and recommended the sentence be imposed consecutive to Ferguson's sentence following revocation. Defense counsel argued for a sentence of two and a half to three years of initial confinement and five years of extended supervision, concurrent to Ferguson's sentence following revocation.

The court explained that it considered the standard sentencing factors and objectives, including the nature of the offense, the need to protect the public, and Ferguson's character and criminal history. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court found that a prison sentence was necessary to not unduly depreciate the seriousness of the offense. The court sentenced Ferguson to a total of nine years of initial confinement and five years of extended supervision, consecutive to Ferguson's sentence following revocation. The sentence was within the applicable penalty range. *See* WIS. STAT. §§ 943.10(1m)(a) (providing that burglary is a Class F felony); 939.50(3)(f) (providing that Class F felonies are punishable by up to twelve years and six months of imprisonment and a \$25,000 fine); 973.01(2)(b)6m. (under bifurcated sentence, maximum length of initial confinement for a Class F felony is seven years and six months). The sentence was well within the maximum Ferguson faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. 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 judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Chesshir is relieved of any further representation of Ferguson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals