



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

January 29, 2013

To:

Hon. Roderick A. Cameron
Circuit Court Judge
Chippewa County Courthouse
711 N. Bridge Street
Chippewa Falls, WI 54729

Karen Hepfler
Clerk of Circuit Court
Chippewa County Courthouse
711 N. Bridge Street
Chippewa Falls, WI 54729

John C. Bachman
John Bachman Law Office
P.O. Box 477
Eau Claire, WI 54702-0477

Steven H. Gibbs
District Attorney
Chippewa County District Attorney's Office
711 N. Bridge Street
Chippewa Falls, WI 54729

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

David M. Winarski 203055
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2012AP2448-CRNM State of Wisconsin v. David M. Winarski (L.C. # 2012CF19)

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

Counsel for David Winarski has filed a no-merit report concluding there is no arguable basis for Winarski to withdraw his no contest pleas or challenge the sentences imposed for maintaining a drug trafficking place, attempted possession of methamphetamine, possession of methamphetamine, and misdemeanor battery.¹ Winarski was advised of his right to respond to

¹ The possession of methamphetamine and battery charges arose in Eau Claire County and were transferred to Chippewa County for a consolidated plea and sentencing.

the report 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 basis for appeal.

The Chippewa County complaint charged Winarski with six felonies. The Eau Claire County complaint charged him with three felonies and two misdemeanors. Pursuant to the plea agreement, Winarski entered no contest pleas to three of the felonies and one misdemeanor. The court imposed concurrent and consecutive sentences totaling four years' initial confinement and six years' extended supervision.

The record discloses no arguable manifest injustice upon which Winarski could withdraw his no contest pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form, fully informed Winarski of the elements of the offenses, the potential penalties and the constitutional rights he waived by pleading no contest. Winarski personally confirmed that he understood the elements, the potential penalties and his constitutional rights. As required by *State v. Hampton*, 2004 WI 117, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Winarski that it was not bound by the parties' sentence recommendations and could impose the maximum sentences. The record shows the pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentences imposed. The court appropriately considered the seriousness of the offenses, Winarski's character and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors and the sentences imposed are not arguably so excessive as

to shock public sentiment. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457 (1975). Winarski apparently told his postconviction counsel that he did not have adequate time to consider the presentence investigation report (PSI). However, at the sentencing hearing he did not say anything when his attorney stated there were no errors or additions to the PSI. Postconviction counsel states Winarski has not supplied him with any information that would have made a substantial difference in his sentence. At the sentencing hearing, Winarski's counsel suggested the possibility of having a second PSI prepared. The prosecutor stated no objection to that proposal. As the court was in the process of scheduling a new sentencing date, Winarski indicated that he wanted to "move on." He personally chose to continue with the sentencing hearing without the benefit of a private PSI. Therefore, there is no basis for believing Winarski was sentenced on erroneous information, and any claim that he was entitled to a private PSI or that his counsel was ineffective for failing to order one was forfeited. See *State v. Thexton*, 2007 WI App 11, ¶6, 298 Wis. 2d 263, 727 N.W.2d 560.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney John Bachman is relieved of his obligation to represent Winarski in these matters. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals