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DISTRICT III

February 12, 2013

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

2012AP2213-CRNM State of Wisconsin v. Morris Taylor (L. C. # 2011CF763)

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

Counsel for Morris Taylor has filed a no-merit report concluding there is no arguable basis for Taylor to withdraw his no contest pleas or challenge the sentences imposed for false imprisonment and battery, both with use of a dangerous weapon and as a repeater. Taylor was advised of his right to respond to 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 complaint charged Taylor with burglary, false imprisonment, battery and stalking, with both use of a dangerous weapon and as a repeater. Pursuant to a plea agreement, he pled no contest to the false imprisonment and battery charges and the other charges were dismissed and read in for sentencing purposes. The court imposed concurrent sentences totaling two years' initial confinement and three years' extended supervision.

The record discloses no arguable manifest injustice upon which Taylor could withdraw his no contest pleas. The court's colloquy, aided by a plea questionnaire, established that no one threatened or forced Taylor to enter the no contest pleas. The court explained the elements of both offenses and the repeater allegations based upon Taylor's 2006 felony conviction. A knife that Taylor possessed during the crimes supported the weapons enhancer. The court also informed Taylor about the range of penalties he faced, including the penalty enhancers. The court reviewed with Taylor the constitutional rights he waived by pleading no contest. As required by ***State v. Hampton***, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Taylor that it was not bound by the parties' sentence recommendations. 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).

The plea agreement required the State to recommend three years' probation with nine months in jail or to join in a defense recommendation of six months in jail as a condition of probation. At the sentencing hearing, however, defense counsel informed the court that, based on new information, the State did not intend to abide by the negotiated recommendation. The court agreed to set over the sentencing to allow more time for Taylor to decide how to proceed. After conferring with his attorney, Taylor informed the court that he wished to proceed, contrary to his counsel's advice. By electing to proceed with knowledge that the State would not abide by

the plea agreement, Taylor forfeited his right to withdraw his no contest pleas or request specific performance of the plea agreement. *See* ***State v. Damaske***, 212 Wis. 2d 169, 193, 567 N.W.2d 905 (Ct. App. 1997).

The record discloses no arguable basis for challenging the sentencing court's discretion. Taylor's postconviction counsel acknowledges that the maximum term of extended supervision on the battery charge is six months. The court imposed twelve months' extended supervision. However, the sentences are concurrent and the controlling sentence is the sentence for false imprisonment. Therefore, any error regarding the term of extended supervision on the battery charge is harmless. *See* ***State v. Sherman***, 2008 WI App 57, ¶9, 310 Wis. 2d 248, 750 N.W.2d 500.

The court could have imposed a sentence of ten years' imprisonment on the false imprisonment charge. *See* WIS. STAT. §§ 940.30, 973.01(2)(b)8., 973.01(2)(d)5. and 939.62(1)(b) (2011-12).[1] The court appropriately considered the seriousness of the offenses, Taylor'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 sentences totaling two years' initial confinement and three years' extended supervision are not arguably so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of her obligation to further represent Taylor in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals