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March 27, 2013

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

2011AP2667-CRNM State of Wisconsin v. Kendall Travon Richardson
(L.C. # 2008CF2313)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Kendall Richardson[1] appeals his judgment of conviction and sentence, which was entered after he pled guilty to felony murder as a party to a crime. *See* WIS. STAT. § 939.05 and § 940.03 (2011-12).[2] Attorney Donald Dudley has filed a no-merit report seeking to withdraw as

[1] The no-merit report, response and supplemental report refer to the defendant as "Kendal Richardson." However, as the circuit court caption and numerous record documents refer to the defendant as "Kendall Richardson," we will use that spelling throughout the opinion.

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

appellate counsel. *See* ***Anders v. California***, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32; and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the plea and sentence. Richardson was sent a copy of the report and has filed a response. Dudley also has filed a supplemental no-merit report. Upon reviewing the entire record, as well as the no-merit report, response and supplemental report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

First, Richardson does not have an arguable basis for withdrawing his plea. A plea may be withdrawn after sentencing only when the defendant can demonstrate by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice such as evidence that the plea was coerced, uninformed, or unsupported by a factual basis, that counsel provided ineffective assistance, or that the prosecutor failed to fulfill the plea agreement. ***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 of such defect here.

At the plea hearing, the prosecutor recited the terms of the plea agreement, and Richardson confirmed that what the prosecutor said was consistent with his understanding of the agreement. The circuit court conducted a plea colloquy which explored Richardson's understanding of the charge against him, the elements of the offense, the penalties he faced, and the constitutional rights he would be waiving. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The court explained that it was not bound to follow the recommendation of the State or the defense and was free to impose any sentence up to the maximum, which the court identified on the record. Richardson confirmed that he understood.

The court also was presented with a plea questionnaire. Richardson confirmed that he reviewed the plea questionnaire with his attorney and understood its contents. The court inquired into Richardson's ability to understand the proceedings and the voluntariness of his decision. Richardson confirmed that the facts stated in the criminal complaint were true and correct. Finally, the court explained to Richardson the direct consequences of his plea, and obtained defense counsel's statement on the record that the criminal complaint established a factual basis for the plea. *See* WIS. STAT. § 971.08(1)(b).

Richardson stated on the record at the plea hearing that he was satisfied with his trial counsel's representation. He has not alleged any other facts that would give rise to a conclusion that there was manifest injustice warranting withdrawal of his plea. *See* ***Krieger***, 163 Wis. 2d at 249-51. Thus, we conclude that Richardson's plea was valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Richardson asserts in his response to counsel's no-merit report that his appellate counsel was ineffective for failing to argue on appeal that Richardson did not fully understand the terms of the plea agreement. As discussed above, the circuit court fulfilled its duties with respect to the plea colloquy. *See* ***Bangert***, 131 Wis. 2d at 272-74. A defendant who seeks to withdraw his plea on grounds constituting a manifest injustice other than a ***Bangert*** violation need only be given an evidentiary hearing if he alleges facts which, if true, would entitle him to relief. ***State v. Bentley***, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996). No hearing is required when the defendant presents only conclusory allegations, or the record conclusively demonstrates that he is not entitled to relief. ***Id.***

In his response to counsel's no-merit report, Richardson makes only general, conclusory statements that he did not fully understand the plea agreement and that there was "mental coercion" by his trial counsel. He does not support these assertions with specific facts which, if true, would entitle him to relief. *See* ***Bentley***, 201 Wis. 2d at 309-10. Therefore, we cannot conclude that Richardson's appellate counsel was ineffective for failure to pursue on Richardson's behalf the plea withdrawal issue on appeal.

We turn next to the issue of whether any challenge to the defendant's sentence would have arguable merit on appeal. Our review of a sentence determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustified 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 record shows that Richardson was afforded the opportunity to address the court prior to sentencing, and that Richardson did so. The circuit court considered the standard sentencing factors and explained their application to this case. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. At the sentencing hearing, the court considered on the record the severity of the offenses, Richardson's character and rehabilitative needs, his prior criminal record, and the safety needs of the community.

Felony murder carries a maximum possible penalty of imprisonment for not more than fifteen years in excess of the maximum period of imprisonment provided by law for the underlying crime. WIS. STAT. § 940.03. In this case, the underlying crime was armed robbery, a class C felony carrying a maximum possible term of imprisonment of not more than forty years and a fine not to exceed $100,000. WIS. STAT. §§ 943.32(2) and 939.50(3)(c). Thus, Robinson was facing up to fifty-five years of imprisonment when he was sentenced. The circuit court

imposed a sentence of thirty-five years, consisting of twenty-five years of initial confinement and ten years of extended supervision. The sentence imposed was within the applicable penalty range. There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and we conclude that the sentence imposed here was not "so excessive and unusual and so disproportionate to the offense[s] 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. Thus, any challenge to Robinson's sentence would lack arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment 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 judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals