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April 8, 2013

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

2011AP1814-CRNM State of Wisconsin v. Troy R. Carr (L.C. #2010CF333)

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

Troy Carr appeals a judgment convicting him of burglary and possession of narcotic drugs. Attorney David Lang has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12)[1]; *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967), 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 Carr's guilty pleas and sentences. Carr was sent a copy of the report, but has not filed a response.

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

Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

The State agreed to dismiss three other charges in this case plus a bail-jumping charge in another case as part of the plea agreement. The circuit court conducted a plea colloquy exploring Carr's understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, as well as the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***Bangert***, 131 Wis. 2d at 266-72; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The court made sure Carr understood that it would not be bound by any sentencing recommendations. The court also inquired into Carr's ability to understand the proceedings and the voluntariness of the plea decision. In addition, the record includes a signed plea questionnaire. Carr indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the amended complaint, which Carr acknowledged were substantially true, provided a sufficient factual basis for the pleas. Carr indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in

any way deficient. Carr has not alleged any other facts that would give rise to a manifest injustice. Therefore, Carr's 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.

A challenge to Carr's sentences would also lack arguable merit. 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 unjustifiable 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). Here, the record shows that Carr was afforded an opportunity to address the court, both personally and by counsel. The court proceeded to consider 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. Regarding the severity of the offenses, the court noted that Carr had violated the trust of the business owners who took a chance hiring him despite his prior criminal record. With respect to Carr's character, the court noted that Carr had a drug problem, and was concerned that it resulted in him harming others, not just himself. The court observed that Carr would continue to present a danger to the public until his drug problem was addressed, and that his treatment needed to be in a confined, controlled setting. The court concluded that a substantial prison term was necessary due to the severity of the offense and the need to deter Carr from future criminal conduct.

The court then sentenced Carr to six years of initial confinement and five years of extended supervision on the burglary count, with a concurrent term of one year of initial confinement and two years of extended supervision on the drug count. The court also awarded 209 days of sentence credit as stipulated by the parties; ordered restitution in the amount of $4,250 to the victims, with the amount owed to the insurance company to be determined later;

imposed standard costs and conditions of supervision; directed Carr to provide a DNA sample if he had not previously done so; and determined that Carr was eligible for the challenge incarceration program and the earned release program, but not a risk reduction sentence.

The sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.10(1m)(a) (classifying burglary as a Class F felony); 939.50(3)(f) (providing maximum imprisonment term of 12.5 years for Class F felonies); 961.41(3g)(am) (classifying possession of narcotic drugs as a Class I felony); 939.50(3)(i) (providing maximum imprisonment term of 3.5 years for Class I felonies); and 973.01 (explaining bifurcated sentence) (all 2009-10 statutes). The sentences imposed were not "'so excessive and unusual and so disproportionate to the offense committed'" as to be unduly harsh. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney David Lang is relieved of any further representation of Troy Carr in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals