



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

April 30, 2013

To:

Hon. Michael T. Judge
Circuit Court Judge
Oconto County Courthouse
301 Washington
Oconto, WI 54153

Michael C. Hodkiewicz
Clerk of Circuit Court
Oconto County Courthouse
301 Washington
Oconto, WI 54153-0078

Edward D. Burke Jr.
District Attorney
301 Washington Street
Oconto, WI 54153

Andrew H. Morgan
Charlton & Morgan Ltd.
Waveland Office Holdings Bldg.
601 N. Fifth St.
Sheboygan, WI 53081

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

Timothy P. Behrensprung 458363
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2012AP2413-CRNM State of Wisconsin v. Timothy P. Behrensprung (L.C. # 2010CF207)

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

Counsel for Timothy Behrensprung has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),¹ concluding no grounds exist to challenge Behrensprung's conviction for party to the crime of armed robbery. Behrensprung was informed of his right to file a response to the no-merit 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

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

In exchange for his no contest plea to the sole charge in the Information, the State agreed to recommend ten years' initial confinement and ten years' extended supervision, consecutive to any prison sentence Behrensprung was already serving. Out of a maximum possible forty-year sentence, the court imposed a sentence consistent with the State's recommendation.

The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Behrensprung completed, informed Behrensprung of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no contest plea. The court confirmed Behrensprung's understanding that it was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also found that a sufficient factual basis existed in the criminal complaint to support Behrensprung's plea. The record shows the plea was knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Upon our independent review of the record, this court discovered that the circuit court failed to personally advise Behrensprung of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). A potential issue would arise if Behrensprung could show that the plea is likely to result in his "deportation, exclusion from admission to this court or denial of naturalization." WIS. STAT. § 971.08(2); *see also State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. The record reveals, however, that Behrensprung was born in Sheboygan and is, therefore, a citizen of the United States not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit.

The no-merit report indicates that Behrensprung challenges his sentence, specifically complaining that the circuit court should have imposed a concurrent sentence. The record discloses no arguable basis for challenging the sentence imposed. After considering the seriousness of the offense; Behrensprung's character, including his criminal history; the need to protect the public; and the mitigating factors Behrensprung raised, the court imposed a sentence authorized by law. *See State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. The court specifically explained that the sentence appropriately addressed the offense in this case and should be served irrespective of any other sentence Behrensprung was then serving. Under these circumstances, it cannot reasonably be argued that Behrensprung's sentence is so excessive as to shock public sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975), or that the court erroneously exercised its sentencing discretion. Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Andrew H. Morgan is relieved of further representing Behrensprung in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals