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. David G. Miron
Circuit Court Judge
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Linda Dumke-Marquardt
Clerk of Circuit Court
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Galen Bayne-Allison
P.O. Box 915
Rhinelander, WI 54501-0915

Allen R. Brey
District Attorney
1926 Hall Avenue
Marinette, WI 54143-1717

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

Michael John Vandenheuvel 323374
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2013AP407-CRNM State of Wisconsin v. Michael John Vandenheuvel
(L.C. # 2011CF192)

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

Counsel for Michael Vandenheuvel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),[1] concluding no grounds exist to challenge Vandenheuvel's conviction for identity theft as a repeater. Vandenheuvel 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 arguable merit to any

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

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

An Information charged Vandenheuvel with two counts of identity theft for financial gain contrary to WIS. STAT. § 943.201(2)(a), both counts as a repeater. In exchange for his no contest plea to one of the counts, the State agreed to dismiss and read in the other count and recommend two years' initial confinement and two years' extended supervision. The court imposed the maximum eight-year sentence consisting of five years' initial confinement and three years' extended supervision, consecutive to any sentence Vandenheuvel was then serving.

Although the no-merit report does not address the validity of the plea, the record discloses no arguable basis for withdrawing Vandenheuvel's no contest plea. The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Vandenheuvel completed, informed Vandenheuvel 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 advised Vandenheuvel of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), and confirmed Vandenheuvel'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. The court also found that a sufficient factual basis existed in the criminal complaint to support Vandenheuvel'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).

The record discloses no arguable basis for challenging the sentence imposed. After considering the seriousness of the offense; Vandenheuvel's character, including his criminal history; the need to protect the public; and the mitigating factors Vandenheuvel 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. Under these circumstances, it cannot reasonably be argued that Vandenheuvel'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).

Finally, the record discloses no arguable basis for challenging the effectiveness of Vandenheuvel's trial counsel. To establish ineffective assistance of counsel, Vandenheuvel must show that his counsel's performance was not within the range of competence demanded of attorneys in criminal cases and that the ineffective performance affected the outcome of the trial. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Further, to prove prejudice, Vandenheuvel must demonstrate that "there is a reasonable probability that, but for counsel's errors, he would not have [pled] guilty and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

The no-merit report addresses whether counsel was ineffective for failing to request a substitution of judge. Even assuming counsel was somehow deficient, Vandenheuvel must establish prejudice. The record, however, does not suggest that Vandenheuvel was treated unfairly by the circuit court judge or that any other reason merited a substitution. To the extent Vandenheuvel may believe that imposition of the maximum sentence establishes some sort of bias on the part of the circuit court, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." ***Liteky v. United States***, 510 U.S. 540, 555 (1994). Our review

of the record and the no-merit report discloses no basis for challenging trial counsel's performance and no grounds for counsel to request a ***Machner***[2] hearing.

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 Galen Bayne-Allison is relieved of further representing Vandenheuvel in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).