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May 14, 2013

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

2013AP291-CRNM State v. Charles A. Copeland, Jr. (L. C. #2011CF178)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Charles Copeland has filed a no-merit report concluding there is no basis to challenge Copeland's conviction for identity theft – financial gain. Copeland was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 US. 738 (1967), we conclude there is no arguable merit to any issue that could be raised.

A criminal complaint charged Copeland with misdemeanor theft, uttering a forgery, and identity theft – financial gain, all as repeaters. The complaint alleged Copeland illegally entered

vehicles in Loyal and took a bag of items from one of the vehicles that contained a checkbook. He attempted to buy items at a Kwik Trip convenience store with one of the checks, but the clerk noticed the check was not Copeland's and called police.

Copeland entered a no contest plea to identity theft – financial gain, without the repeater status.[1] The other counts were dismissed and read in. Additionally, an operating after revocation charge in a Wood County case was dismissed and read in. The circuit court imposed a sentence consisting of two years' initial confinement and thirty months' extended supervision.

There is no manifest injustice upon which Copeland could withdraw his plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Copeland of the constitutional rights he waived by pleading no contest, the elements of the offense and the potential penalty. The court specifically advised Copeland it was not bound by the parties' agreement and could impose the maximum penalty. An adequate factual basis supported the conviction. The record shows the plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defects and defenses. ***Id.*** at 265-66.

[1] Although not addressed in the no-merit report, our independent review of the record reveals that although Copeland was convicted upon his plea to count three of the Information, with the repeater status removed, the judgment and amended judgment of conviction include references to the repeater status. Because this appears to be a clerical error, upon remittitur, the court shall enter an amended judgment of conviction correctly describing Copeland's conviction for unauthorized use of an individual's personal identifying information or documents – financial gain, contrary to WIS. STAT. §§ 943.201(2)(a), 939.50(3)(h) (2011-12).

The record also discloses no basis for challenging the court's sentencing discretion. The court considered the proper factors, including Copeland's character, the seriousness of the offense and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted Copeland's escalating criminal history and observed, "It's obvious that you have a drug and alcohol problem." The court also noted, "Normally I would see someone on your behalf arguing for a county jail; and again, I think there's the realization that that is not a viable option at this point in time. And again, that's because of the prior revocations and the number of offenses that you've had." The court imposed a sentence far less than authorized by law and therefore presumptively neither overly harsh nor excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

The no-merit report also suggests Copeland contends his trial counsel was ineffective for failing to argue for jail instead of prison, based on the court's statement quoted in the preceding paragraph. There is no arguable merit to such a contention. The court made it clear that jail was not a viable option in this case.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the judgment is modified, and as modified, affirmed pursuant to WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney John Bachman is relieved of further representing Copeland in this matter.

Diane M. Fremgen
Clerk of Court of Appeals