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DISTRICT III

May 21, 2013

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

2012AP1643-CRNM State of Wisconsin v. Jeffrey J. Milbee (L.C. # 2011CF266)

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

Counsel for Jeffrey Milbee has filed a no-merit report concluding there is no arguable basis for Milbee to withdraw his no contest pleas or challenge the imposition of probation for three counts of failure to pay child support. Milbee was advised of his right to respond to the 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 basis for appeal.

The complaint charged Milbee with ten counts of failure to pay child support. Pursuant to a plea agreement, he entered no contest pleas to three of the counts and the remaining counts

were dismissed and read-in for sentencing purposes. The State also dismissed a separate complaint charging Milbee with throwing or expelling bodily substances and disorderly conduct. The court withheld sentence and placed Milbee on probation for five years.

Milbee's probation was subsequently revoked and he was sentenced to prison. Neither the revocation nor the sentence after revocation is the subject of this appeal.

Before Milbee entered the no contest pleas, a question arose regarding his competency to stand trial. Doctor Harlan Heinz examined Milbee and found he had a substantial capacity to understand the proceedings and assist in his own defense. On that basis, no issue regarding Milbee's competency was pursued at the plea or sentencing hearings. The record does not indicate any grounds for challenging Milbee's competency at that time.

The record discloses no arguable manifest injustice upon which Milbee could withdraw his no contest pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form, informed Milbee of the elements of the offenses, the potential penalties and the constitutional rights he waived by pleading no contest. Milbee indicated he was taking tranquilizers at the time of the plea, but assured the court that the medication did not affect his thought process. As required by ***State v. Hampton***, 2004 WI 117, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Milbee that it was not bound by the parties' sentence recommendation. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The imposition of five years' probation was jointly recommended. A defendant cannot challenge a sentence he requested the court to impose. ***State v. Scherreiks***, 153 Wis. 2d 510,

518, 451 N.W.2d 759 (Ct. App. 1989). The circuit court granted Milbee's motion to amend the judgment of conviction to reflect 166 days' jail credit, and waived the DNA surcharge. Therefore, the record discloses no arguable basis for challenging the judgment.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney John Bachman is relieved of his obligation to further represent Milbee in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals