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DISTRICT III

June 18, 2013

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

2013AP871-CRNM State of Wisconsin v. Arthur F. Hill (L. C. # 2012CF962)

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

Counsel for Arthur Hill has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),¹ concluding no grounds exist to challenge Hill's convictions for misdemeanor bail jumping and operating while intoxicated (OWI), as a tenth and subsequent offense with an alcohol concentration enhancer. Hill 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 issue

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

The State charged Hill with misdemeanor bail jumping, OWI and operating with a prohibited alcohol concentration (PAC), the OWI and PAC charges as tenth and subsequent offenses with alcohol concentration enhancers. In exchange for his no contest pleas to the bail jumping and OWI charges, the State agreed to dismiss the remaining count in this and another case, and read in the latter. The parties jointly recommended an eight-year sentence for the OWI conviction, consisting of four years' initial confinement and four years' extended supervision. They remained free to argue regarding the appropriate sentence for the bail jumping conviction. The court followed the joint recommendation for the OWI conviction and imposed a consecutive six-month sentence for the bail jumping conviction.

The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Hill completed, informed him of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering no contest pleas. The court confirmed Hill'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 Hill's pleas. The record shows the pleas were knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

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

The record discloses no arguable basis for challenging the sentence imposed. Because Hill affirmatively approved the sentence imposed for his OWI conviction, he cannot attack it on appeal. *See State v. Scherriecks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). In any event, the court considered the proper sentencing factors before imposing a sentence authorized by law. *See State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. With respect to the bail jumping conviction in particular, the court determined that a consecutive six-month sentence was necessary punishment for Hill's decision to drink contrary to a court order. It cannot reasonably be argued that Hill'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 Hill's trial counsel. To establish ineffective assistance of counsel, Hill 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, Hill 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). 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.

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Daniel R. Goggin II is relieved of further representing Hill in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals