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 IV

June 13, 2013

To:

Hon. Nicholas McNamara
Circuit Court Judge, Br. 5
Dane County Courthouse
215 South Hamilton
Madison, WI 53703

Michelle L. Viste
Asst. District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

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

Shelley Fite
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707

Donte D. Beasley Sr. 568468
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:

2011AP2239-CRNM State of Wisconsin v. Donte D. Beasley, Sr. (L.C. # 2009CF1936)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Donte Beasley appeals a judgment convicting him of one count of attempted first-degree intentional homicide and two counts of first-degree reckless injury, contrary to WIS. STAT. §§ 939.32, 940.01(1)(a), and 940.23(1)(a) (2011-12).[1] Attorney Shelley Fite has filed a no-merit report seeking to withdraw as appellate counsel. *See* ***Anders v. California***, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32; *see also* ***State ex rel. McCoy v. Wisconsin Court of Appeals***,

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

137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). Beasley was sent a copy of the report and has filed a response and a supplemental response. Upon reviewing the entire record, as well as counsel's no-merit report and Beasley's responses, we conclude that there are no arguably meritorious appellate issues.

Beasley's convictions were based upon the entry of no-contest pleas, and we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 271-72, 283, 289, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

In exchange for Beasley's no-contest pleas, the State agreed to dismiss and read in additional charges and to cap its sentencing recommendation at twenty-five years of initial confinement time. The State followed through on that agreement. The court conducted a plea colloquy exploring Beasley's understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***Bangert***, 131 Wis. 2d at 266-72; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The court made sure Beasley understood that the court would not be bound by the terms of the plea agreement. The court also inquired into Beasley's ability to understand the proceedings and the voluntariness of the plea decision. In addition, the record includes a signed plea questionnaire. Beasley indicated to the court that he understood the

information explained on that form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Beasley now asserts that no factual basis exists for his no contest plea because he was too intoxicated at the time of the incident to form the requisite intent under WIS. STAT. § 940.01(1)(a). He asserts that his trial counsel failed to inform him of the potential intoxication defense under WIS. STAT. § 939.42 and failed to inform the court that Beasley was diagnosed with bipolar disorder two months prior to the incident giving rise to the charges in this case. He also argues that the court should have read him the jury instructions for the intoxication defense. These arguments are without merit.

First, there is no requirement that a jury instruction be read during a plea colloquy. Our supreme court stated in ***Bangert***, 131 Wis. 2d at 268, that the reading of jury instructions is one of several ways that a circuit court may determine a defendant's understanding of the nature of the charges against him. As previously discussed, we are satisfied that the court adequately explored during the plea colloquy Beasley's understanding of the changes against him and the rights he was waiving, including the right to present defenses.

Next, any claim of ineffective assistance of counsel would be without merit because Beasley cannot demonstrate that he was prejudiced by his counsel's alleged deficiencies. *See* ***State v. Swinson***, 2003 WI App 45, ¶58, 261 Wis. 2d 633, 660 N.W.2d 12. The record contains evidence of Beasley's intoxication at the time of the incident and of his mental health issues. The State nonetheless charged Beasley with attempted intentional homicide, and during the plea colloquy, the court asked Beasley if he agreed that the State would be able to prove at trial the facts that were alleged in the complaint. Beasley responded, "Yes." Beasley's counsel told the court that the complaint could be used to find a factual basis for the pleas. Beasley stated at the plea hearing that he was satisfied with his attorney, and we have found nothing in the record to

suggest that counsel's performance was in any way deficient. Beasley has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas are valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Beasley's sentences would also lack arguable merit. Our review of a sentence determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Beasley was afforded an opportunity to comment on the presentence investigation report and address the court. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offenses, the court stated that the crime had been tragic and that, although Beasley was not necessarily a bad person, the gravity of the offenses was the overwhelming factor. With respect to Beasley's character, the court referenced Beasley's relatively minor past criminal history, as well as ongoing substance abuse. The court concluded that a prison term was necessary to protect the public.

The court then sentenced Beasley to fifteen years of initial confinement and ten years of extended supervision on the homicide count and five years of initial confinement and 5 years of extended supervision on each of the reckless injury charges, all consecutive. The court also awarded 425 days of sentence credit and determined that the defendant was eligible for a risk reduction sentence.

The sentences imposed are within the applicable penalty ranges. *See* WIS. STAT. §§ 940.01(1)(a), 939.32(1)(a) (attempted first-degree intentional homicide is a Class B felony);

939.50(3)(b) (providing maximum imprisonment term of sixty years for Class B felonies); 940.23(1)(a) (classifying first-degree reckless injury as a Class D felony); 939.50(3)(d) (providing maximum imprisonment term of twenty-five years for Class D felonies); and 973.01 (explaining bifurcated sentence structure). The sentences were not "so excessive and unusual and so disproportionate to the offense committed" as to be unduly harsh—particularly given that they were well within the limits of the maximum sentences. ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoting another source).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Shelley Fite is relieved of any further representation of the defendant in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals