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 II

June 26, 2013

To:

Hon. Timothy M. Van Akkeren
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Nan Todd
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Joseph R. DeCecco
District Attorney
615 N. 6th Street
Sheboygan, WI 53081

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

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

Sean N. Lloyd
Sheboygan Detention Center
2923 S. 31st St.
Sheboygan, WI 53081-6411

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

2011AP2190-CRNM State of Wisconsin v. Sean N. Lloyd (L.C. # 2010CF288)
2011AP2276-CRNM State of Wisconsin v. Sean N. Lloyd (L.C. # 2010CF300)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

In these consolidated appeals, Sean Lloyd appeals from judgments convicting him of two counts of felony bail jumping contrary to WIS. STAT. § 946.49(1)(b) (2009-10), misdemeanor theft contrary to WIS. STAT. § 943.20(1)(a) (2009-10), and illegal possession of a prescription medication contrary to WIS. STAT. §§ 450.11(7)(h) and 450.11(9)(a) (2009-10). Lloyd's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and

---

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

Anders v. California, 386 U.S. 738 (1967). Lloyd received a copy of the report and was advised of his right to file a response. He has not done so. Our review of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32 revealed issues with arguable merit relating to Lloyd's no contest pleas and the sentence. Lloyd has decided to waive those arguable issues. Therefore, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

Our June 26, 2012 order identified three arguable defects in the plea colloquy and one defect in the sentence.[2] Lloyd decided to waive the arguable plea colloquy defects in order to preserve the benefit of the plea agreement, and he decided not to challenge his sentence because the sentence had been served. Our October 30, 2012 order identified another arguable defect in the plea colloquy relating to the dismissed and read-in charges. Lloyd decided to waive this issue as well. Because Lloyd has waived the arguable defects in the plea colloquy, there would be no arguable merit to a challenge to the plea colloquy.

We review the concurrent sentences for bail jumping (three years consisting of eighteen months of initial confinement and eighteen months of extended supervision) and theft (twelve months concurrent).[3] With regard to the sentences, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76,

[2] The defects in the plea colloquy were: failure to give Lloyd the deportation warning; (2) failure to inform Lloyd of the constitutional rights waived by his no contest pleas; and (3) failure to determine the extent of Lloyd's education and general comprehension. The sentence defect related to the imposition of a sentence that exceeded the maximum.

[3] As discussed in our June 26 order, the sentence for illegal possession of a prescription medication was arguably in excess of that allowed by statute. The sentence has been served, and Lloyd has waived any challenge to it in this appeal.

270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Lloyd. In fashioning the sentences, the court considered the seriousness of the offenses, Lloyd's history of prior offenses and commission of new crimes while on bond, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The felony sentences comply with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

Although Lloyd did not file a response to counsel's no-merit report, his responses to our June 26 and October 30 orders ask this court to review the rest of the record, including the restitution order. We have done so, and we discern no issues with arguable merit for appeal.

Counsel's no-merit report addresses the restitution order. The circuit court ordered restitution for the victim of one of the read-in offenses. Restitution may be ordered for a read-in offense. WIS. STAT. §§ 973.20(1g) and 973.20(1r). Section 973.20(1r) states that a circuit court shall order the defendant to pay restitution "to any victim of a crime considered at sentencing ... unless the court finds substantial reason not to do so and states the reason on the record."

The victim of the read-in theft testified that property was stolen from his garage. He also testified to the replacement value of the stolen property. WIS. STAT. § 973.20(2)(b). One of those items, a chain saw, was recovered and traced back to Lloyd; the other items were never recovered. The circuit court set restitution based on the evidence adduced at the restitution hearing.

The unexplained possession of recently stolen property raises an inference, essentially a rebuttable presumption, that the possessor is guilty of the incident in which the property was

stolen. ***State v. Johnson***, 11 Wis. 2d 130, 139, 104 N.W.2d 379 (1960). The circuit court found the requisite causal nexus between the read-in crime considered at sentencing and the victim's damages. ***State v. Rash***, 2003 WI App 32, ¶6, 260 Wis. 2d 369, 659 N.W.2d 189. The circuit court properly exercised its discretion in awarding restitution. ***State v. Johnson***, 2002 WI App 166, ¶7, 256 Wis. 2d 871, 649 N.W.2d 284. We agree with appellate counsel that there would be no arguable merit to a challenge to the restitution order.

The record reveals that Lloyd partially litigated a suppression motion. Before the evidentiary hearings on the motion concluded, Lloyd entered his no contest pleas. Therefore, the suppression motion was waived by the no contest pleas. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53 ("no contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations occurring prior to the plea"); ***Rafferty v. State***, 29 Wis. 2d 470, 478-79, 138 N.W.2d 741 (1966) (plea waives objection to the legality of the evidence).

Lloyd has declined to pursue issues we identified with arguable merit. Our independent review of the record does not disclose any other potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we affirm the judgments of conviction and relieve Timothy O'Connell of further representation of Lloyd in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy O'Connell is relieved of further representation of Sean Lloyd in these matters.

Diane M. Fremgen
Clerk of Court of Appeals