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June 24, 2013

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

2011AP2963-CRNM State of Wisconsin v. Deon Montrell Bean (L.C. # 2011CF524)

Before Higginbotham, Sherman and Blanchard, JJ.

Deon Bean appeals a judgment of conviction and sentence for burglary. Attorney Scott Szabrowicz has filed a no-merit report and a supplemental no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of Bean's plea and sentencing. Bean was sent a copy of the report, but has not filed a response. Upon independently reviewing

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

the entire record, as well as the no-merit report and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Bean pled guilty to one count of burglary as charged in the criminal complaint. The court sentenced Bean to one year of jail time, consecutive to a sentence Bean was already serving.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Bean's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Bean and determine information such as Bean's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea.² *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Our review of the record and no-merit reports reveals no other basis to challenge Bean's plea. Accordingly, we agree with counsel's assessment that this issue lacks arguable merit.

² By order dated April 26, 2013, we noted that the circuit court failed to personally advise Bean of the deportation consequences of his plea, contrary to WIS. STAT. § 971.08(1)(c). We stated that there may be an arguable basis for plea withdrawal if Bean shows that his plea is likely to result in his "deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2); *see also State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. We directed counsel to review that issue and consult with Bean. Counsel then filed a supplemental no-merit report informing us that Bean is a United States citizen. We agree with counsel that this issue lacks arguable merit for appeal.

The no-merit report also addresses whether there would be arguable merit to a challenge to Bean's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered the standard sentencing factors and objectives, including the need for punishment and rehabilitation, Bean's character, and the gravity of the offense. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the applicable penalty range. *See* WIS. STAT. §§ 943.10(1m)(a); 939.50(3)(f); 973.01(2)(b)6m. The sentence was well within the maximum Bean faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Szabrowicz is relieved of any further representation of Bean in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals