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DISTRICT III

July 2, 2013

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

2013AP473-CRNM State of Wisconsin v. Dallas A. Smart (L.C #2011CF59)

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

Counsel for Dallas Smart has filed a no-merit report concluding there is no basis to challenge Smart's convictions arising from his methamphetamine "lab." Smart was advised of his right to respond 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 and summarily affirm.

Smart was arrested following an extensive methamphetamine investigation. At the preliminary hearing, a Taylor County detective testified that Smart admitted manufacturing and

selling methamphetamine out of his girlfriend's trailer in the City of Medford. The detective also explained Smart admitted using numerous other individuals to procure pseudoephedrine products and other materials utilized in the manufacturing process, and to dispose of the waste, in exchange for which Smart would provide free meth.

An Information charged Smart with fifteen counts related to his "cooking" and selling methamphetamine, within 1000 feet of a park. The charges also included possession and disposal of the drug waste, soliciting others to purchase pseudoephedrine, and maintaining a drug house. The charges included repeater enhancements. Smart pled no contest to seven counts as a repeater and the remaining eight counts were dismissed and read in.[1]

The circuit court imposed a sentence consisting of nine years' initial confinement and eleven years' extended supervision on count one; two years' initial confinement and two years' extended supervision on count two; two years' initial confinement and two years' extended supervision on count four; two years' initial confinement and two years' extended supervision on count five; one-year initial confinement and two years' extended supervision on count seven; four years' initial confinement and four years' extended supervision on count ten; and four years' initial confinement and four years' extended supervision on count eleven. All the sentences were concurrent to each other and consecutive to other pending cases.

The no-merit report addresses whether an issue of arguable merit arises from the circuit court's denial of Smart's request to dismiss certain counts at the preliminary hearing for lack of probable cause. The court properly found the evidence presented at the preliminary hearing

[1] A separate case was also dismissed and read in.

established the counts were transactionally related. *See* ***State v. Williams***, 198 Wis. 2d 516, 536-37, 544 N.W.2d 406 (1996). Smart was properly bound over for trial.

There is also no manifest injustice upon which Smart could withdraw his no contest pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court addressed Smart personally at the plea hearing and engaged him in an extensive colloquy. The court also addressed the plea questionnaire and waiver of rights form, with attached jury instructions. The court determined trial counsel had discussed with Smart the elements of the offenses, the constitutional rights he waived by pleading no contest and the potential penalties. Smart advised the court that he did not wish any further explanation from the court of these issues. To the extent it could be argued that the record discloses a potential issue relating to the validity of the pleas because the court improperly relied upon the plea questionnaire, the no-merit report represents that "after discussing [these issues] with Smart, it could not be argued in good faith that he did not understand them." Smart's failure to respond to the no-merit report therefore concedes his understanding of the elements of the offenses, the constitutional rights he waived and the potential penalties. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*** 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). An adequate factual basis supported the convictions. The court specifically advised Smart that it was not bound by the parties' agreement and could impose the maximum penalties. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986).

The no-merit report addresses whether Smart should be able to withdraw his pleas because of the failure to hold an arraignment. The record reveals the court suggested, "Why don't we hold off on an arraignment; so if [Smart] wants to file a motion [challenging the

specificity and particularity of the Information], he can do that." Smart agreed. During a status conference on November 21, 2011, Smart indicated he had just received the transcript of the preliminary hearing and requested "some time to digest that in conjunction with the legal research and bring a challenge [to several counts at the bindover] …. At this juncture what we're hoping to do is set the arraignment back a couple of weeks." A scheduling conference was held and the court scheduled the arraignment for January 10, 2012, also by agreement of the parties. Smart entered his no contest pleas on December 16, 2011. Smart thereby waived any objection to the lack of an arraignment. *See* ***id.*** at 265-66 (entry of a valid no contest plea constitutes a waiver of non-jurisdictional defects and defenses).

The record also discloses no basis for challenging the court's sentencing discretion. The court considered the proper factors, including Smart's character, the seriousness of the offenses and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted methamphetamine is "uncontravertedly a very serious, devastating type of drug." The court likened Smart to "an octopus with his arms out, reaching out to other people in order to solicit them to provide this pseudoephedrine that is used and necessary in making meth …." The court also discussed Smart's criminal history. "I presided over cases involving Mr. Smart in the past … and the attitude that he's exhibited, and I guess I have to say that his attitude … was flippant, belligerent, basically, you know, I don't care what rules or orders you're going to put on me, I'm not going to follow them anyway …." The court emphasized the necessity to "take Mr. Smart out of society for a period of time in order to effectuate that … most important goal, which is to make sure that Mr. Smart doesn't commit further crime[s] and that other people don't commit further crime[s], namely, setting up meth labs." The sentences imposed were far less than the maximums authorized by law and therefore presumptively neither

harsh nor excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that attorney Timothy O'Connell is relieved of further representing Smart in this matter. *See* WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals