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**DISTRICT IV/III**

March 31, 2015

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

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2013AP2732-CRNM      State of Wisconsin v. Andrew J. Meinholz (L. C. #2010CF1226)

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

Counsel for Andrew Meinholz has filed a no-merit report concluding no grounds exist to challenge Meinholz's convictions for first-degree sexual assault while aided by another; first-degree sexual assault by use of a dangerous weapon; second-degree sexual assault by threat of force; party to the crime of kidnapping; party to the crime of human trafficking; theft of movable property; and seven counts of misdemeanor bail jumping. Meinholz 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.<sup>1</sup>

The State charged Meinholz with first-degree sexual assault while aided by another; first-degree sexual assault by use of a dangerous weapon; second-degree sexual assault by threat of force; party to the crime of kidnapping; party to the crime of human trafficking; theft of movable property; and seven counts of misdemeanor bail jumping, all counts as a repeater. The charges arose from allegations that Meinholz and a codefendant abducted a woman from a Middleton skate park. The complaint further alleged that Meinholz forced the victim to have intercourse with him and to perform oral sex on both him and his codefendant—on one occasion, threatening her by “rubbing a knife against her vaginal wall.” The victim was then driven to Milwaukee, where Meinholz attempted to prostitute the victim to a group of college students who ultimately assisted her in escape.

Meinholz was initially found incompetent to stand trial. After a period of commitment, the court determined his competency was restored. Meinholz pleaded no contest to the crimes, but not guilty by reason of mental disease or defect (NGI). The State dismissed the repeater allegations and also dismissed and read in charges from a separate case. After the circuit court accepted the no contest pleas, Meinholz waived his jury trial rights in favor of a court trial to determine Meinholz’s mental responsibility. The court ultimately found that despite his mental illness, Meinholz was culpable for the crimes. Out of a maximum possible two-hundred-thirty-one-year sentence, the court imposed concurrent and consecutive sentences totaling sixty-six

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

years, consisting of twenty years' initial confinement and forty-six years' extended supervision, followed by a consecutive twenty-five-year probation term.

There is no arguable merit to challenge the circuit court's determination that Meinholz's competency was restored. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." *State v. Byrge*, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477. To determine legal competency, the court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *Id.*, ¶31. A circuit court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶45.

The evaluating psychiatrist, Erik Knudson, submitted a report opining to a reasonable degree of medical certainty that Meinholz "has substantial mental capacity to understand the proceedings and assist in his own defense." Knudson recounted that Meinholz had stopped "acting out" and was "much more appropriate." Knudson further noted that even prior to Meinholz's behavioral improvement, Knudson "did not see evidence of mental illness that would cause an inability for him to control his behavior." According to Knudson, Meinholz understood the charges he faced, his behavior leading to the charges, and basic courtroom procedures. Meinholz exhibited an ability to control his behavior, communicate effectively and advocate for himself. At the competency hearing, Knudson testified consistent with his report. Although Meinholz stated he was incompetent, the court found otherwise based on Knudson's testimony. The record supports the circuit court's determination.

The record discloses no arguable basis for withdrawing Meinholz's no contest pleas. The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Meinholz completed, informed Meinholz 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 Meinholz'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 advised Meinholz of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). The court also confirmed that medication Meinholz was taking did not affect his ability to understand the proceedings. Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Meinholz committed the crimes charged. 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).

There is likewise no arguable merit to challenge the circuit court's determination that Meinholz was culpable for his crimes. WISCONSIN STAT. § 971.15(3) provides: "Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence." The presence of a mental disease or defect, however, does not automatically excuse a defendant from the legal consequences of his or her conduct. *State v. Duychak*, 133 Wis. 2d 307, 316-17, 395 N.W.2d 795 (Ct. App. 1986). The critical inquiry is "whether, as a result of a certain mental condition, a defendant lacks substantial capacity to either appreciate the wrongfulness of the defendant's conduct or conform the defendant's conduct to the requirements of the law." *Id.*

Here, the court found that Meinholz suffers from a mental disease or defect. Based on the evidence, the court concluded Meinholz could nevertheless appreciate the wrongfulness of

his conduct. For example, Meinholz wanted the child lock engaged on the backseat door so the victim could not get out and, after hearing a Crimestoppers commercial on the radio, he worried the police were looking for him. He also took steps to avoid suspicion or detection. Specifically, after sexually assaulting the victim, he made her wipe menstrual blood off his penis with her hands. When he took her inside a restaurant to wash her hands, he explained to an employee that she cut herself. Meinholz also prevented the victim from speaking in Spanish to anybody, which suggested to the court that he could appreciate the wrongfulness of his conduct and wanted to evade detection.

The court also concluded, based on the evidence, that Meinholz could conform his conduct to the requirements of the law. The court recounted that this was not one impulsive act but, rather, a series of episodes that extended over the course of two days. The court believed “there was too much calculation over an extended period of time for me to believe that [Meinholz] couldn’t conform his conduct to the law.” To the extent there may have been conflicting testimony, the circuit court, as fact finder, “is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness’s testimony.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. The record supports the court’s finding that Meinholz failed to meet his burden of proving the NGI defense.

Finally, the record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offenses; Meinholz’s character, including his criminal history; the need to protect the public; and the mitigating factors Meinholz raised. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that

Meinholz'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).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Anthony Jurek is relieved of further representing Meinholz in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*