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DISTRICT III

March 26, 2019

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

2018AP121-CRNM State of Wisconsin v. Joseph D. Olsen (L. C. No. 2015CF318)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for Joseph D. Olsen filed a no-merit report concluding no grounds exist to challenge Olsen's conviction for first-degree sexual assault of a child by sexual contact with a child under age thirteen, contrary to WIS. STAT. § 948.02(1)(e) (2017-18).¹ Olsen was informed

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

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.

The State charged Olsen with two counts of first-degree sexual assault of a child under age twelve; two counts of first-degree sexual assault of a child by sexual contact with a child under age thirteen; and one count of first-degree sexual assault of a child by sexual contact with a child under age sixteen, with use or threat of force or violence. Invoking the provisions of WIS. STAT. § 939.615(2)(a), and after providing the notice required by WIS. STAT. § 973.125, the State also sought to place Olsen on lifetime sex offender supervision. In exchange for Olsen's guilty plea to one count of first-degree sexual assault of a child by sexual contact with a child under age thirteen, the State agreed to dismiss and read in the remaining charges. Both sides remained free to argue at sentencing. The court imposed the maximum sixty-year sentence, consisting of forty years' initial confinement followed by twenty years' extended supervision, and ordered lifetime supervision of Olsen as a serious sex offender.

The no-merit report addresses whether Olsen knowingly, intelligently and voluntarily entered his guilty plea. We note that at the plea hearing, the circuit court failed to personally advise Olsen of the potential deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). However, in order to obtain relief because of such an omission, a defendant must show that the plea is likely to result in deportation, exclusion from admission, or denial of naturalization. *See State v. Negrete*, 2012 WI 92, ¶26, 343 Wis. 2d 1, 819 N.W.2d 749. The record reflects that Olsen is a United States citizen not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit. Upon reviewing the record, we

ultimately agree with counsel's analysis and conclusion that any challenge to Olsen's plea would lack arguable merit.

The no-merit report also concludes that any challenge to the circuit court's sentencing discretion lacks arguable merit. We agree with counsel's analysis and conclusion that there is no arguable merit to challenge the length of the sentence imposed. The record, however, reflects that the sentencing court ordered Olsen to pay the expenses of his extradition from Missouri, but it ordered the reimbursement amount as "restitution" instead of a "cost." A "Restitution Information" form submitted to the court included \$1,969.87 for counseling, medical deductible and prescriptions for the victim, as well as \$575 in extradition costs to the Dunn County Sheriff's Department. Consistent with that form, the court ordered the amounts delineated therein plus an additional 10% surcharge, and the judgment of conviction reflects the same.

Restitution to the county cannot be ordered where the county was not an "actual victim of crimes." See *State v. Schmaling*, 198 Wis. 2d 756, 761, 543 N.W.2d 555 (Ct. App. 1995). Thus, although "costs" that may be assessed against a defendant convicted of a crime include "the fees and disbursements of the agent appointed to return a defendant from another state or country," see WIS. STAT. § 973.06(1)(a), we could not say there was no arguable merit to challenge the inclusion of extradition costs as part of restitution. We consequently directed counsel to file a supplemental no-merit report addressing why it would be wholly frivolous to challenge the restitution imposed.

Counsel has filed a supplemental no-merit report with an attached order amending the judgment of conviction to move the extradition costs and attendant surcharge from the "restitution" portion of the judgment to the "costs" portion of the judgment. An amended

judgment of conviction attached to the supplemental no-merit report reflects the same. With this amendment, any challenge to the restitution imposed would lack arguable merit.

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Susan E. Alesia is relieved of her obligation to further represent Joseph Olsen in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals