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

November 29, 2023

To:

Hon. Laura F. Lau
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Austin D. Long, #704236
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2022AP385-CRNM State of Wisconsin v. Austin D. Long (L.C. #2020CF1881)

Before Gundrum, P.J., Grogan and Lazar, 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).

Austin D. Long appeals from a judgment convicting him of repeated sexual assault of a child, sexual exploitation of a child, bestiality, and possession of child pornography. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Long filed a response to the no-merit report. Counsel then filed a letter indicating that all issues Long raised in his response were addressed in

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

the no-merit report, and no supplemental report was needed. After reviewing the record, counsel's report, and Long's response, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Long was convicted following his guilty pleas to repeated sexual assault of a child, sexual exploitation of a child, bestiality, and possession of child pornography. As part of a plea agreement with the State, eighteen additional charges were dismissed and read in.[2] The charges stemmed from multiple sexual assaults by nineteen-year-old Long against his half-sister, who was four years old at the time. Long often recorded the sexual assaults and shared the footage online. He also admitted to having engaged in repeated sexual contacts with the family dog.

For Long's conduct, the circuit court imposed the following sentence: twenty-five years of initial confinement and fifteen years of extended supervision for repeated sexual assault of a child; twenty-five years of initial confinement and fifteen years of extended supervision for sexual exploitation of a child; three years of initial confinement and three years of extended supervision for bestiality; and fifteen years of initial confinement and ten years of extended supervision for possession of child pornography. The court ordered the sentence for each count to run concurrent to all others. This no-merit appeal follows.

The no-merit report addresses: (1) whether there would be arguable merit to a challenge to any nonjurisdictional defects related to Long's prosecution, including the issue of bail;

[2] The dismissed and read-in charges were one count of incest, three counts of bestiality, ten counts of possession of child pornography, and four counts of sexual exploitation of a child.

(2) whether Long's pleas were entered knowingly, voluntarily, and intelligently; and (3) whether the circuit court properly exercised its discretion at sentencing.

First, we see no arguable merit to a challenge to any nonjurisdictional defects related to Long's prosecution. In his response to counsel's no-merit report, Long takes issue with the fact that the circuit court increased his bail after the State amended the criminal complaint to add several charges. Long argues the increase was unlawful because he had not engaged in any misconduct after his initial bail was posted. However, the State articulated a valid reason for an increase, with which the court agreed. Further, it is well-established law that a guilty plea operates to waive all nonjurisdictional defects and defenses, aside from any suppression ruling.[3] *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. Because any issues involving bail were waived by the guilty pleas and rendered moot by the conviction and sentence credit given, there is no arguable merit to a challenge based on excessive bail or any other nonjurisdictional defects.

Next, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 272-276, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

[3] Long brought no suppression motion, and nothing in the record suggests any basis for suppression of any relevant evidence.

Pursuant to a plea agreement, Long entered guilty pleas to four of the twenty-two charges against him. The circuit court conducted a standard plea colloquy, inquiring into Long's ability to understand the proceedings and the voluntariness of his plea decision and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the pleas, and the constitutional rights being waived. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72. There is no arguable merit to a claim that Long's plea was not knowing, voluntary, or intelligent.

Long's counsel accepted the second amended criminal complaint as a factual basis for the plea and indicated that he went over that complaint several times with Long. Long indicated satisfaction with his attorney's representation. Nothing in our independent review of the record would support a claim that trial counsel rendered ineffective assistance. Long has not alleged any other facts that would give rise to a manifest injustice.

In his response to the no-merit report, Long complains that the assistant district attorney (ADA) was biased against him and failed to consider the victims' wishes in presenting her sentencing argument. Our review of the record shows that the ADA complied with the plea agreement, and nothing in the no-merit report, Long's response, or the record indicates any other impropriety in the ADA's handling of this case.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offense, Long's character, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Long had the opportunity, through his counsel, to comment on the presentence investigation (PSI) ordered by the court and the alternate PSI commissioned

by trial counsel. He also had the opportunity to address the court directly, and did so prior to the court's imposition of sentence.

In his response to counsel's no-merit report, Long complains about the length of his sentence. Long repeats sentencing arguments his counsel made in the circuit court, including his belief that his cooperation with law enforcement warrants a lighter sentence. He asserts that the court put too much weight on his bestiality conviction because it imposed the maximum prison sentence on that count—three years of initial confinement and three years of extended supervision. *See* WIS. STAT. §§ 944.18(2)(a) (classifying bestiality as a Class H felony); 939.50(3)(h) (establishing the maximum penalties for a Class H felony); 973.01(2)(b)8. (establishing the maximum period of initial confinement for a Class H felony). There is nothing in the record to support Long's assertion that his sentence is too harsh. As stated above, the court imposed an aggregate sentence of twenty-five years of initial confinement and fifteen years of extended supervision because it ordered the sentences for all counts to run concurrent. Long faced a possible sentence of eighty-three years of initial confinement and forty-eight years of extended supervision. Under the circumstances, regardless of the court's imposition of the maximum prison term for Long's bestiality conviction, it cannot reasonably be argued that his sentence is excessive, much less so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32. Therefore,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved from further representing Austin D. Long in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals