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DISTRICT III

December 19, 2023

To:

Hon. Michael T. Judge
Circuit Court Judge
Electronic Notice

Trisha LeFebre
Clerk of Circuit Court
Oconto County Courthouse
Electronic Notice

Thomas Brady Aquino
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Jonathan M. Hanson 708241
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You are hereby notified that the Court has entered the following opinion and order:

2023AP814-CRNM State of Wisconsin v. Jonathan M. Hanson (L. C. No. 2021CF44)

Before Stark, P.J., Hruz and Gill, 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 Jonathan Hanson has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),[1] concluding that no grounds exist to challenge Hanson's conviction for repeated sexual assault of the same child, contrary to WIS. STAT. § 948.025(1)(e). Hanson has filed a response to the no-merit report that appears to challenge the validity of his no-contest plea, and counsel has filed a supplemental no-merit report addressing Hanson's claims. Upon

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

our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that 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.

In March 2021, the State filed a criminal complaint charging Hanson with repeated sexual assault of the same child, contrary to WIS. STAT. § 948.025(1)(d); strangulation and suffocation; and physical abuse of a child—intentionally causing bodily harm by conduct that creates a high probability of great bodily harm. The charges were based on allegations that Hanson had repeatedly sexually assaulted a child who lived in his home when the child was between twelve and one-half and fifteen years old. The complaint recounted descriptions of the assaults that the victim had provided during a forensic interview, and it also included incriminating statements that Hanson made during an interview with law enforcement after waiving his ***Miranda***[2] rights.

The parties ultimately reached a plea agreement, which provided that Hanson would plead no contest to repeated sexual assault of the same child, and the remaining counts would be dismissed and read in. In addition, the State's sentence recommendation would be capped at fifteen years' initial confinement, and the defense would be free to argue at sentencing. The circuit court accepted Hanson's no-contest plea during a plea hearing on November 10, 2021, following a plea colloquy that was supplemented by a signed plea questionnaire and waiver of rights form.

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Prior to sentencing, the parties determined that the victim was at least thirteen years old at the time of the assaults, and Hanson therefore could not be convicted of repeated sexual assault of the same child under WIS. STAT. § 948.025(1)(d). During a hearing on March 21, 2022, the circuit court vacated Hanson's conviction on that charge and permitted him to enter a no-contest plea to an amended charge of repeated sexual assault of the same child, contrary to WIS. STAT. § 948.025(1)(e). Following a plea colloquy, the court accepted Hanson's plea to the amended charge, finding that his plea was freely, voluntarily, and intelligently entered.[3] Hanson agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for his plea, and the court found that an adequate factual basis existed.

The circuit court then proceeded to sentencing. A statement from the victim's family members was read to the court, the parties made their sentencing arguments, and Hanson declined to exercise his right of allocution. After considering the gravity of the offense, Hanson's lack of remorse, his need for rehabilitation in a confined setting, and the need to protect the public, the court sentenced Hanson to twenty years' initial confinement followed by ten years' extended supervision, with 383 days of sentence credit.

The no-merit report addresses whether any issues of arguable merit exist regarding the adequacy of the circuit court's plea colloquy, the court's exercise of its sentencing discretion, and the amount of sentence credit awarded. We agree with counsel's description, analysis, and

[3] During the March 21 plea hearing, both the circuit court and defense counsel referred to a new plea questionnaire and waiver of rights form that had been prepared for that hearing. However, that plea questionnaire is not in the appellate record. In the no-merit report, appellate counsel states that he "spoke with the [circuit court] clerk's office, and they have been unable to locate the March 21 questionnaire."

conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

Hanson has filed a response to the no-merit report, which appears to challenge the validity of his no-contest plea on multiple grounds. Appellate counsel has filed a supplemental no-merit report and a supporting affidavit asserting that these claims lack arguable merit. We agree with appellate counsel that none of the allegations in Hanson's response give rise to an arguably meritorious basis for appeal.

To withdraw his or her plea after sentencing, a defendant must show, by clear and convincing evidence, that a refusal to allow plea withdrawal would result in manifest injustice. ***State v. Dillard***, 2014 WI 123, ¶36, 358 Wis. 2d 543, 859 N.W.2d 44. As relevant here, a defendant may demonstrate manifest injustice by showing that his or her plea was not knowing, intelligent, and voluntary, or by showing that his or her trial attorney was constitutionally ineffective. ***Id.***, ¶¶37, 84.

In his response to the no-merit report, Hanson first asserts that the officer who interviewed him "trick[ed]" him into "signing [his] rights away." We construe this assertion as a claim that Hanson should be permitted to withdraw his no-contest plea because his trial attorney was ineffective by failing to move to suppress Hanson's incriminating statements on the grounds

that Hanson did not validly waive his ***Miranda*** rights.[4] This claim lacks arguable merit because Hanson would be unable to show that his trial attorney performed deficiently by failing to file a suppression motion on the grounds that Hanson's ***Miranda*** waiver was invalid. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (explaining that, to prevail on an ineffective assistance claim, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense).

When the State seeks to admit evidence of an accused's custodial statements, it must show that the accused was adequately informed of his or her ***Miranda*** rights and knowingly, intelligently, and voluntarily waived those rights. ***State v. Santiago***, 206 Wis. 2d 3, 18, 556 N.W.2d 687 (1996). The State establishes a prima facie showing of a valid ***Miranda*** waiver by demonstrating that: (1) law enforcement informed a defendant of all the rights and admonitions required by ***Miranda***; and (2) the defendant indicated that he or she understood those rights and was willing to make a statement. ***State v. Lee***, 175 Wis. 2d 348, 360, 499 N.W.2d 250 (Ct. App. 1993). Once the State has made this prima facie showing, a court may conclude that a defendant's waiver was invalid only if the defendant presents "countervailing evidence" showing that the defendant did not, in fact, knowingly, intelligently, and voluntarily waive his or her ***Miranda*** rights. *See* ***id.*** at 360-61.

[4] Although a valid guilty or no-contest plea generally waives all nonjurisdictional defects and defenses, *see* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53, an order denying a motion to suppress evidence "may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint," *see* WIS. STAT. § 971.31(10). In this case, however, Hanson did not file any suppression motions. Consequently, any claim that Hanson's incriminating statements should have been suppressed must be analyzed under the ineffective-assistance-of-counsel rubric.

We have reviewed the video recording of Hanson's interview with law enforcement, which was provided to this court as Exhibit B to appellate counsel's affidavit in support of the supplemental no-merit report. The video shows that, at the beginning of the interview, an officer read Hanson his ***Miranda*** rights, and Hanson signed a form waiving those rights and affirmatively stated that he understood the information provided and did not have any questions. Although Hanson asserts in his response to the no-merit report that he was "trick[ed]" into waiving his rights, he has not provided any countervailing evidence to suggest that his waiver was not, in fact, knowing, intelligent, and voluntary. On this record, there would be no arguable merit to a claim that Hanson's trial attorney performed deficiently by failing to file a suppression motion on the grounds that Hanson's ***Miranda*** waiver was invalid.

Hanson also asserts in his response to the no merit report that the "cop made [him]" make incriminating statements. To the extent Hanson means to argue that his incriminating statements were involuntary, any claim that Hanson's trial attorney was ineffective by failing to file a suppression motion on that basis would lack arguable merit. Having reviewed the video of the interview, we agree with appellate counsel—for the reasons stated in the supplemental no-merit report—that there is no reasonable likelihood that a suppression motion on this basis would have succeeded. *See* ***State v. Wheat***, 2002 WI App 153, ¶23, 256 Wis. 2d 270, 647 N.W.2d 441 ("Trial counsel's failure to bring a meritless motion does not constitute deficient performance.").

Furthermore, appellate counsel has provided this court with a memo authored by Hanson's trial attorney, which documented a meeting between trial counsel and Hanson on March 16, 2022—five days before Hanson entered his no-contest plea to the amended charge. The memo recounts that Hanson asked trial counsel whether it was still possible to enter a not-guilty plea, and counsel explained that Hanson "certainly could withdraw his plea and

schedule a jury trial if he likes and that is entirely his decision." Counsel then discussed the evidence with Hanson, noting that the victim "gave a statement and [Hanson] almost entirely corroborated her statement, but disagreed with the number of acts." The memo continues:

> I explained there did not seem to be a basis where we could move to suppress [Hanson's] statement that would be successful given his age, contradictory statements with the investigator's comments, no coercion, ***Miranda*** rights being read, and [the] length of [the] interview. However, I gave [Hanson] the option to withdraw his plea and schedule a motion hearing and jury trial both before we completed plea forms and after we reviewed the PSI [presentence investigation report]. He declined to do so and indicated that he wanted to resolve his case still.

The memo further states that trial counsel discussed the possibility of filing a suppression motion with a colleague, who "confirm[ed]" counsel's conclusion regarding "the lack of factors to suggest [that Hanson's] confession was false or coerced."

Trial counsel's memo shows that counsel considered filing a suppression motion on the grounds that Hanson's statements were involuntary, but counsel ultimately reached the objectively reasonable conclusion that such a motion was unlikely to succeed. *See* ***State v. Kimbrough***, 2001 WI App 138, ¶31, 246 Wis. 2d 648, 630 N.W.2d 752 ("[O]ur function upon appeal is to determine whether defense counsel's performance was objectively reasonable according to prevailing professional norms."). Trial counsel nevertheless gave Hanson the option to file a suppression motion, but Hanson declined to do so. Having declined trial counsel's invitation to file a suppression motion, Hanson cannot now argue that counsel was ineffective by failing to file such a motion. *See* ***Strickland***, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."); ***United States v. Weaver***, 882 F.2d 1128, 1140 (7th Cir. 1989) (explaining that when a defendant is fully informed of the reasonable options and

agrees to follow a particular strategy, that strategy cannot later form the basis for an ineffective assistance of counsel claim).

Hanson also claims in his response to the no-merit report that the video of his interview with law enforcement was altered to make it seem as though his statements were voluntary, and his trial attorney "di[dn't] do anything about it." We agree with appellate counsel that any claim that Hanson's trial attorney was ineffective by failing to file a suppression motion on these grounds would lack arguable merit. We have reviewed the entire video, and we agree with appellate counsel's assessment that "[n]othing in the video suggests [that] it was altered." In addition, appellate counsel avers in his affidavit that he discussed this issue with trial counsel, who stated that he was "familiar with the police department's system for recording and maintaining such interviews," and he "believed that manipulating the video in any significant way was beyond its technological capability." Absent any evidence to support a conclusion that the video was altered, there would be no arguable merit to a claim that Hanson's trial attorney performed deficiently by failing to move to suppress Hanson's statements on that basis. *See* ***Wheat***, 256 Wis. 2d 270, ¶23.

Hanson further asserts in his response to the no-merit report that he is "slow" and does not understand "leg[al] stuff." We construe these assertions as an argument that Hanson should be permitted to withdraw his plea because the plea was not knowing, intelligent, and voluntary, due to Hanson's intellectual limitations. We agree with appellate counsel, however, that such a claim would lack arguable merit.

As appellate counsel notes, the circuit court conducted two separate plea colloquies with Hanson. On both occasions, the court established that Hanson had completed high school, which

suggests that any intellectual limitations on Hanson's part are not so severe as to have prevented him from entering a knowing, intelligent, and voluntary plea. Appellate counsel also avers in his affidavit that he spoke with Hanson's trial attorney, who stated that he "spoke and met with Hanson repeatedly" and had "no concern that Hanson was incompetent" to enter a plea. Trial counsel further stated that, "while Hanson was soft-spoken, he would speak intelligently about the case, such as by bringing up possible issues that could help the defense." Trial counsel also "believed that Hanson's work history would be inconsistent with a claim" that Hanson lacked the mental capacity to enter a knowing, intelligent, and voluntary plea.

In addition, appellate counsel avers that he has "had multiple conversations with Hanson," and "[w]hile Hanson's communication skills are unsophisticated," counsel has never had "any concern that Hanson lacked the ability to consult with [counsel] or understand the legal proceedings." Appellate counsel also states that he is "unaware of Hanson being diagnosed with a learning disability or any other condition that would have rendered him legally incompetent at the time of the plea."[5] Although Hanson told the PSI author that he had been on disability "for mild autism and heart failure" since 2017, appellate counsel asserts that "there is no indication that [Hanson's] autism manifested in a way that rendered him incompetent." Furthermore, while Hanson asserts that he is "slow" and does not understand "leg[al] stuff," he does not point to any specific information that he did not understand at the time he entered his plea. We agree with appellate counsel that, on this record, Hanson's general assertions regarding his intellectual

[5] The PSI notes that Hanson "reported being placed in special education classes" in high school. The PSI does not, however, reflect that Hanson has been diagnosed with any specific learning disability. The PSI also states that Hanson "maintain[ed] B's and C's" in school and "never failed or repeated grades."

limitations are insufficient to support an arguably meritorious claim that his no-contest plea was not knowing, intelligent, and voluntary.

Finally, Hanson asserts that he is "not saying sorry for something [he] di[dn't] do" and that there was "no evidence" to support his conviction other than his own incriminating statements. Hanson's claim that there was no other evidence to support his conviction ignores the victim's detailed descriptions of the assaults. In any event, to the extent Hanson claims that he is entitled to relief because he is innocent of the crime for which he was convicted, we note that Hanson waived that argument by entering a no-contest plea. *See* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53 ("The general rule is that a guilty or no[-]contest plea waives all nonjurisdictional defects and defenses ….").

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved of any further representation of Jonathan Hanson in this matter. *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