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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

March 6, 2024

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Lauren Jane Breckenfelder
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Willie Ambrose Jr., #385261
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2023AP132-CRNM State of Wisconsin v. Willie Ambrose, Jr. (L.C. #2020CF1054)

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).

Willie Ambrose, Jr. appeals his judgment of conviction entered after he pled guilty to ten counts of possession of child pornography. His appellate counsel, Lauren Jane Breckenfelder, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2021-22).[1] Ambrose has filed a response. Upon this court's independent review of the Record as mandated by ***Anders***, counsel's report, and Ambrose's response, we conclude

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

that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

In April 2020, a detective from the Kenosha Police Department, who was involved with a task force relating to internet crimes against children, received a "cyber tip" from the National Center of Missing and Exploited Children. The tip led to a Dropbox account which was traced to Ambrose. The detective obtained a search warrant for the Dropbox account, which contained "thousands of photos and videos," many of which depicted child pornography. Ambrose's phone was also taken for analysis after he admitted to having images on that as well.

Ambrose was charged with ten counts of possession of child pornography. The matter was scheduled for a trial in March 2021. At the final pretrial conference held in February 2021, the State informed the circuit court that continuing analysis by law enforcement of the images in the Dropbox account and on Ambrose's phone had uncovered over 100 images of child pornography. The State further advised the court that it had extended a plea offer to Ambrose, where in exchange for his plea to the ten counts charged, it would agree not to file any additional charges. However, if Ambrose rejected the plea agreement, the State said it anticipated filing more charges based on the additional images discovered.

The circuit court then explained to Ambrose that this was his last opportunity to accept the plea offer, or the case would go to trial. Ambrose requested a new attorney, claiming that his trial counsel had not explained the plea agreement properly. The circuit court rejected the request, stating that problem was easily corrected and was not a sufficient reason to permit counsel to withdraw. However, the court decided to "leave this plea bargaining open for a couple of days."

Another final pretrial conference was held in March 2021. A new plea offer was presented by the State, where it agreed not to file additional charges in exchange for Ambrose's guilty plea to five of the counts charged, with the other five counts to be dismissed outright. Ambrose indicated that he would like to enter a no contest plea; however, the circuit court stated that it would not accept a no contest plea, explaining that it did not feel a no contest plea was appropriate in this case. The court also told Ambrose that there would be no opportunity for additional plea bargaining. Ambrose stated he wanted to proceed with a trial.

The trial was rescheduled for May 2021. On the day of trial, Ambrose asked permission from the circuit court to accept the previous plea agreement and plead guilty to five counts of possession of child pornography. The court stated that Ambrose had missed his opportunity to accept the plea agreement for five counts, but that if he wanted to plead guilty to the ten counts charged, the court would accept that plea because of calendar congestion relating to the pandemic.

Additionally, the circuit court noted that it had received a letter from Ambrose earlier that month, in which Ambrose said he was not guilty but that he would be willing to plead no contest. The court reiterated that it would not accept a no contest plea in this case. In fact, the court emphasized that it would only accept Ambrose's guilty plea if he admitted that he committed the offenses. Ambrose admitted to having the images in his possession, but the court explained that was only "part of the crime," and that there were additional elements to the offense: the intent to view the images, and knowledge that the children in those images were under the age of eighteen. Ambrose refused to admit anything other than he "had the pictures," so the court stated they would proceed with the trial. After a brief recess, Ambrose refused to return to the courtroom, and the trial was adjourned.

The trial was again rescheduled, for January 2022. After the jury had been selected, Ambrose indicated that he wanted to enter a plea pursuant to the original offer by the State—a guilty plea to the ten counts charged in exchange for no further charges arising out of the additional images discovered by law enforcement. That offer included the conditions that the State would recommend prison with no specific sentence and lifetime supervision as a registered sex offender. The circuit court accepted the plea.

The circuit court imposed sentences totaling eight years of initial confinement, to be followed by twenty years of extended supervision. The sentences also included lifetime registration as a sex offender. This no-merit appeal follows.

In the no-merit report, appellate counsel addresses two issues: whether there would be arguable merit to appealing the validity of Ambrose's plea; and whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Ambrose. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of either of these issues.

With regard to Ambrose's plea, the plea colloquy by the circuit court substantially complied with the requirements set forth in WIS. STAT. § 971.08 and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court confirmed that Ambrose signed and understood the plea questionnaire and waiver of rights form, which further demonstrates that Ambrose's plea was knowingly, voluntarily, and intelligently entered. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987).

However, we observe that during the plea colloquy, the circuit court neglected to "advise [Ambrose] personally that the terms of the plea agreement, including [the] prosecutor's

recommendations, are not binding on the court," as required by ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. This warning informs the defendant that the circuit court is not obligated to accept the State's charging concessions, sentence recommendations, or any other terms of the plea agreement. ***Id.***, ¶32.

While the omission of the ***Hampton*** warning does present a *prima facie* ***Bangert***[2] violation, no issue of arguable merit arises from the defect in this case. To withdraw a guilty plea after sentencing, a defendant must show that withdrawal is necessary to correct a manifest injustice. ***Brown***, 293 Wis. 2d 594, ¶18. Here, the circuit court did ultimately accept the charging concessions—that no further charges would be brought against Ambrose for the additional images discovered. Therefore, Ambrose was not affected by the defect in the colloquy, and thus he cannot show that plea withdrawal is necessary to correct a manifest injustice. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441; *see also* ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64 ("[R]equiring an evidentiary hearing for every small deviation from the circuit court's duties during a plea colloquy is simply not necessary for the protection of a defendant's constitutional rights.").

Based on the foregoing, we are satisfied that the record establishes Ambrose's plea was knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the plea's validity.

Turning to Ambrose's sentencing, the record reflects that the circuit court considered relevant sentencing objectives and factors. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d

[2] *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

535, 678 N.W.2d 197; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Furthermore, the sentences imposed are well within the statutory maximum for this offense, indicating that they are not unduly harsh or unconscionable. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

In his response, Ambrose indicates that he knows of other cases that were "the same" as his, but the defendants received a lesser sentence. However, it is "well established in Wisconsin that mere disparity in the sentences received by persons committing similar crimes does not establish a denial of due process." ***State v. Smart***, 2002 WI App 240, ¶13, 257 Wis. 2d 713, 652 N.W.2d 429. Ambrose also notes the condition for lifetime registration as a sex offender, referencing his trial counsel's argument at sentencing for fifteen years of registration. However, lifetime registration was part of the plea agreement, and is permitted under WIS. STAT. § 939.615(2)(a). We therefore agree with appellate counsel's conclusion that there would be no arguable merit to a claim that the circuit court erroneously exercised its discretion during sentencing.

Ambrose also raises in his response an issue relating to the payment of the costs and fees imposed upon conviction. This issue appears to involve a $5,000 fine, based on a surcharge of $500 for each image Ambrose was convicted of possessing, as described by the circuit court at the sentencing hearing. The judgment of conviction reflects that this fine is to be paid during Ambrose's first three years of extended supervision.

The Record reflects that this deferment was discussed at the end of the sentencing hearing. Ambrose's trial counsel asked the circuit court to order the "fees imposed today" to be paid when Ambrose is on extended supervision; the court agreed that they could be paid during

his first three years of extended supervision. Ambrose suggests in his response that payment of *all* the fees and court costs imposed upon conviction was deferred by the court's statement. However, the image surcharge was the only fee specifically delineated by the court at the sentencing hearing. Therefore, the judgment of conviction accurately reflects the payment terms that were discussed at sentencing.

Finally, Ambrose complains that his devices confiscated by law enforcement were never returned to him. Those items are under the province of the Kenosha Police Department, not this court.

Our independent review of the Record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Ambrose further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Lauren Jane Breckenfelder is relieved from further representing Willie Ambrose, Jr. 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