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DISTRICT II

August 14, 2013

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

2013AP429-CRNM State of Wisconsin v. Steven M. Wrecke (L.C. #2012CF579)

Before Brown, C.J.[1]

Steven M. Wrecke appeals from a judgment convicting him upon his pleas of no contest to two counts of fourth-degree sexual assault, contrary to WIS. STAT. § 940.225(3m). Wrecke's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Wrecke received a copy of the report and was advised of his right to file a response, but has elected not to do so. Upon consideration of the report and an

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

independent review of the record, we conclude that the judgment may be summarily affirmed, as there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. We relieve Attorney Charles David Betthauser of further representing Wrecke in this matter.

Wrecke had just been released from jail on probation and a friend allowed him to stay at the home the friend shared with his girlfriend and her three young daughters. Wrecke became intoxicated and began fondling the eleven-year-old. Initially charged with one count of first-degree sexual assault of a child, an amended information charged him with that felony and two misdemeanor counts of fourth-degree sexual assault. Wrecke pled no contest to the misdemeanors; the felony was dismissed and read in. The court sentenced Wrecke to nine months on one count, consecutive to his current sentence, and nine months stayed for two years' probation on the second, also consecutive. In addition, the court ordered that Wrecke register as a sex offender for a period of fifteen years. This no-merit appeal followed.

Wrecke has no arguable basis for withdrawing his no-contest pleas.[2] A plea may be withdrawn after sentencing only when the defendant can demonstrate by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice such as evidence that the plea was coerced, uninformed, or unsupported by a factual basis; that counsel provided ineffective assistance; or that the prosecutor failed to fulfill the plea agreement. *See* ***State v.***

[2] The no-merit report fails to discuss this potential issue, which always should be considered when reviewing a conviction following the entry of a guilty or no-contest plea.

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.

The circuit court conducted a plea colloquy that adequately explored Wrecke's understanding of the charges, the penalties, and the constitutional rights he would be waiving, and inquired into his ability to understand the proceedings and the voluntariness of his decision. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.[3] In addition, the record includes a plea questionnaire Wrecke and his attorney signed. Wrecke confirmed that he reviewed it with his attorney and understood the information it contained. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We conclude that no arguable basis exists for an appellate challenge to Wrecke's pleas. Accordingly, they operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered on the record the proper factors, including Wrecke's character, the seriousness of the offense, his rehabilitative needs, and the need to protect the public, and explained their application to Wrecke's case. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633

[3] The circuit court failed to advise Wrecke of his plea's potential deportation consequences. *See* WIS. STAT. § 971.08(1)(c). To be entitled to plea withdrawal on this basis, Wrecke would have to show "that the plea is likely to result in [his] deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2); *see also* ***State v. Douangmala***, 2002 WI 62, ¶23, 253 Wis. 2d 173, 646 N.W.2d 1. There is no indication in the record that Wrecke can make such a showing.

(1984); *see also* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence imposed by the court was within the applicable penalty range. *See* WIS. STAT. §§ 940.225(3m), 939.50(3)(c). In addition, Wrecke's crimes fall within the enumerated offenses for which a court may order sex-offender registration in the exercise of its sentencing discretion. *See* WIS. STAT. § 973.048(1m). The court explained its rationale for ordering Wrecke to register. In sum, the sentence imposed here was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what it right and proper under the circumstances." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Charles David Betthauser is relieved of further representing Wrecke in these matters.

Diane M. Fremgen
Clerk of Court of Appeals