



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 III/IV

August 19, 2013

To:

Hon. Larry Jeske
Reserve Judge

Linda Dumke-Marquardt
Clerk of Circuit Court
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Allen R. Brey
District Attorney
1926 Hall Avenue
Marinette, WI 54143-1717

Faun M. Moses
Asst. State Public Defender
P. O. Box 7862
Madison, WI 53707-7892

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Aaron J. Newbury 378401
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2012AP1662-CRNM State of Wisconsin v. Aaron J. Newbury (L.C. # 2011CF108)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Attorney Faun Moses, appointed counsel for Aaron Newbury, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Newbury with a copy of the report, and both counsel and this court advised him of his right to file a response. Newbury has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Newbury pled no contest to two counts of third-degree sexual assault. The court imposed consecutive sentences totaling six years of initial confinement and eight years of extended supervision.

The no-merit report addresses whether Newbury's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Newbury was waiving, and other matters.

However, we previously directed Newbury's attorney to further review the issue of a factual basis for the plea. As described in our May 10, 2013, order, the complaint was used as the factual basis for the plea, and while the facts alleged appear to support the charges that were initially filed (first-degree sexual assault of a child), they do not necessarily support the charges that Newbury pled no contest to.

In a supplemental no-merit report, Newbury's attorney explains that case law allows a defendant to plead guilty to a lesser charge, even without a complete factual basis, as long as there was a factual basis for a more serious charge reasonably related to the offense to which the plea is being offered. *State v. Harrell*, 182 Wis. 2d 408, 419, 513 N.W.2d 676 (Ct. App. 1994). Counsel explains, and we agree, that there was a factual basis here for the original charge, and that it was reasonably related to the offense that Newbury pled to. Therefore, there is no arguable merit to this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors such as protection of the community, Newbury's need for treatment, the nature of the crime, and Newbury's guilty plea. The court did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Moses is relieved of further representation of Newbury in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals