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

September 10, 2013

To:

Hon. William M. Atkinson
Circuit Court Judge
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Jason B. Beck
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54301-3600

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

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

Joshua P. Muelver 430664
Redgranite Corr. Inst.
P.O. Box 925
Redgranite, WI 54970-0925

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

2013AP324-CRNM State of Wisconsin v. Joshua P. Muelver
2013AP325-CRNM (L.C. ## 2011CF1290, 2012CF577)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Joshua Muelver has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),[1] concluding no grounds exist to challenge Muelver's convictions for two counts of repeated sexual assault of a child with at least three violations of first-degree sexual

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

assault, contrary to WIS. STAT. § 948.025(1)(d).[2] Muelver was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal.

In Brown County Circuit Court case No. 2011CF1290, the State charged Muelver with repeated sexual assault of the same child with at least three first-degree sexual assault violations. In Brown County Circuit Court case No. 2012CF577, the State charged Muelver with repeated sexual assault of a different child, again with at least three first-degree sexual assault violations. In exchange for his no contest pleas to the crimes charged, the State agreed to cap its total sentence recommendation for both cases at fifteen years' initial confinement and fifteen years' extended supervision. Out of a maximum possible one-hundred-twenty-year sentence, the court imposed concurrent thirty-year sentences consisting of twenty years' initial confinement and ten years' extended supervision.

The no-merit report addresses whether Muelver is entitled to plea withdrawal on the ground that he was not formally arraigned in case No. 2012CF577. We agree with counsel's conclusion that there is no arguable merit to this possible issue. The right of arraignment "will be waived by the defendant by his silence when he ought to demand it, in all cases … where it appears that he is fully informed as to the charge against him, and is not otherwise prejudiced in

[2] We note that in Brown County Circuit Court case No. 2011CF1290, the record shows Muelver was charged and convicted upon his no contest plea of repeated sexual assault of a child with at least three violations of first-degree sexual assault, contrary to WIS. STAT. § 948.025(1)(d). The judgment of conviction, however, identifies the offense as first-degree sexual assault of a child contrary to WIS. STAT. § 948.02(1). Because this appears to be a clerical error, upon remittitur, the court shall enter an amended judgment of conviction correctly describing Muelver's conviction for repeated sexual assault of a child with at least three first-degree sexual assault violations, contrary to § 948.025(1)(d).

the trial of the case by the omission of that formality." ***Bridges v. State***, 247 Wis. 350, 375, 19 N.W.2d 862 (1945). Here, Muelver did not object and he was fully informed of the charges against him. Further, nothing in the record indicates that Muelver was prejudiced by the omission of the formality.

The court's plea colloquies, supplemented by plea questionnaire and waiver of rights forms that Muelver completed, informed Muelver of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering no contest pleas. The court confirmed Muelver's understanding that it was not bound by the terms of the plea agreement, *see* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also found that a sufficient factual basis existed in the criminal complaints to support Muelver's pleas. The record shows the pleas were knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Upon our independent review of the record, this court discovered that the circuit court failed to personally advise Muelver of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). A potential issue would arise if Muelver could show that the pleas are likely to result in his "deportation, exclusion from admission to this court or denial of naturalization." *See* WIS. STAT. § 971.08(2); *see also* ***State v. Douangmala***, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. The record reveals, however, that Muelver was born in Wisconsin and is, therefore, a citizen of the United States not subject to deportation. Any challenge to the pleas on this basis would therefore lack arguable merit.

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offenses;

Muelver's character, including his criminal history; the need to protect the public; and the mitigating factors Muelver raised. *See* ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that Muelver's sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

Therefore,

IT IS ORDERED that the judgment in case No. 2011CF1290 is modified, and as modified, affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the judgment in case No. 2012CF577 is affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Timothy T. O'Connell is relieved of further representing Muelver in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals