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September 16, 2013

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

2012AP923-CRNM State of Wisconsin v. Brian P. Loonsfoot (L.C. # 2011CF282)

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

Attorney Donna Hintze, appointed counsel for Brian Loonsfoot, has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Loonsfoot's plea or sentence. Loonsfoot was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire

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

record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Loonsfoot was charged with two counts of second-degree sexual assault of a child under sixteen years of age. Pursuant to a plea agreement, Loonsfoot pled no-contest to the first count and the second count was dismissed and read-in for sentencing purposes. The court sentenced Loonsfoot to seven years of initial confinement and six years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Loonsfoot's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy, utilizing the plea questionnaire Loonsfoot signed, which satisfied the court's mandatory duties to personally address Loonsfoot and determine information such as Loonsfoot's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea.² *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Loonsfoot's plea would lack arguable merit.

² The circuit court failed to personally advise Loonsfoot of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). However, the presentence investigation report indicates that Loonsfoot was born in Michigan. Accordingly, Loonsfoot is a citizen of the United States and not subject to deportation. *See* 8 U.S.C. § 1401(a) (2012). Any challenge to the plea on this basis would therefore lack arguable merit. *See State v. Douangmala*, 2002 WI 62, ¶¶23-25, 253 Wis. 2d 173, 646 N.W.2d 1.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Loonsfoot's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense and the need for punishment, deterrence, and protection of the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the applicable penalty range. *See* WIS. STAT. §§ 948.02(2), 939.50(3)(c), 973.01(2)(b)3. The sentence was well within the maximum Loonsfoot faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court granted Loonsfoot 114 days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals