



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 II

September 25, 2013

To:

Hon. John A. Jorgensen
Circuit Court Judge
PO Box 2808
Oshkosh, WI 54903

Melissa M. Konrad
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Christian A. Gossett
District Attorney
P. O. Box 2808
Oshkosh, WI 54903-2808

Steven D. Phillips
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

Raphael D. Walker
323 W. 7th St.
Kaukauna, WI 54130

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

2013AP1385-CRNM State of Wisconsin v. Raphael D. Walker (L.C. #2012CM1472)

Before Gundrum, J.¹

Raphael D. Walker appeals from a judgment convicting him of disorderly conduct. Walker'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). Walker was informed of his right to file a response but has not exercised it. Upon consideration of the no-merit report and our independent review of the record as mandated by *Anders* and RULE 809.32, we conclude that there exist no issues of arguable appellate merit and that the appeal may be disposed of summarily. *See* WIS. STAT.

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.

RULE 809.21. We affirm the judgment of conviction and relieve Attorney Steven D. Phillips of further representing Walker in this matter.

Twenty-one-year-old Walker pled no contest to misdemeanor disorderly conduct after engaging in inappropriate behavior with his girlfriend's then eleven-year-old daughter. He was sentenced to sixty days in jail. This no-merit appeal followed.

The no-merit report first addresses whether Walker's no-contest plea was knowingly, voluntarily and intelligently entered. The record shows that the court engaged in a thorough colloquy satisfying the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We agree with counsel's thorough analysis and his conclusion that no issue of arguable merit could arise from the plea taking.

The report also addresses the court's exercise of sentencing discretion. Sentencing is left to the discretion of the circuit court and appellate review is limited to determining whether that discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court must address the sentencing objectives including, but not limited to, protection of the public, punishment and rehabilitation of the defendant, and deterrence. *Id.*, ¶40. The court must provide a "rational and explainable basis" for the sentence it imposes to allow this court to ensure that discretion in fact was exercised. *Id.*, ¶¶39, 76.

No basis exists to disturb the sentence imposed. The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough, rational explanation for imposing the sentence it did. The court considered Walker's age, that he was a new father, and recently had become employed. It also weighed the impact of Walker's behavior on the girl and her mother, the age disparity between him and the girl, the danger he posed to the

community, given a prior conviction for other inappropriate behavior with a child, and the fact that he was on supervision when he committed this crime. The court deemed punishment the most important factor and that probation would unduly depreciate the seriousness of the offense. Walker faced ninety days in jail and a \$1000 fine. Walker was ordered to serve sixty days in jail, with Huber privileges, and without a fine. We cannot conclude that the imposed sentence is so excessive or unusual so as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975); see also *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Our review of the record discloses no other potential issues for appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven D. Phillips is relieved of further representing Walker in this matter.

Diane M. Fremgen
Clerk of Court of Appeals