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DISTRICT I/II

October 9, 2013

To:

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

2013AP1005-CRNM State of Wisconsin v. Yves P. McKinnie (L.C. # 2011CF510)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Yves P. McKinnie appeals from a judgment convicting him of second-degree reckless homicide for the death of his eighteen-month-old daughter. McKinnie's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). McKinnie received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we

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

conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether McKinnie's guilty plea was knowingly, intelligently, and voluntarily entered and (2) whether the circuit court erroneously exercised its discretion at sentencing.

With respect to the entry of the guilty plea, the record shows that the circuit court engaged in a colloquy with McKinnie that satisfied the requirements of WIS. STAT. § 971.08(1)(a), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of McKinnie's guilty plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing a sentence of twenty years of imprisonment, the court considered the seriousness of the offense, McKinnie's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the age and vulnerability of the victim, the court's decision does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.[2] Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney John R. Breffeilh of further representation in this matter.

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 John R. Breffeilh is relieved of further representation of McKinnie in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

[2] McKinnie did file a motion to suppress statements he gave to police. However, he did not litigate the motion before entering his guilty plea. Thus, we deem the motion abandoned and will not discuss it further. *See* ***State v. Woods***, 144 Wis. 2d 710, 716, 424 N.W.2d 730 (Ct. App. 1988) (motion made but not pursued is abandoned).