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DISTRICT II/I

October 14, 2013

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

2013AP1276-CRNM State of Wisconsin v. Miles T. Colwell (L.C. #2012CF33)

Before Curley, P.J., Kessler and Brennan, JJ.

Miles T. Colwell appeals a judgment convicting him of four counts of possession of child pornography. Attorney Helen M. Mullison filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Colwell was advised of his right to respond to the no-merit report, but he has not responded. After considering the no-merit report and conducting an independent review of

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

the record, we conclude that there are no issues of arguable merit that Colwell could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Colwell's guilty plea was made voluntarily, knowingly, and intelligently. The plea colloquy complied in all respects with the requirements of WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The circuit court addressed whether Colwell understood the elements of the charges against him, the potential maximum penalties he faced, and the constitutional rights he would be waiving by entering a plea. The circuit court also ascertained that Colwell had reviewed and understood the plea questionnaire and waiver-of-rights form. *See* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The plea agreement was stated on the record and the circuit court asked Colwell whether he understood the agreement before proceeding with the colloquy. Colwell admitted the facts in the complaint, which provided a factual basis for the charges. In light of these circumstances, there would be no arguable merit to an appellate argument that the plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Colwell to an aggregate term of twenty years of imprisonment, with six years of initial confinement and fourteen years of extended supervision. In framing its sentence, the circuit court emphasized the very serious nature of the crime, but also focused on the aspects of Colwell's character and history that the circuit court believed were positive and suggested that after treatment he might avoid future criminal conduct. The circuit court noted that Colwell had little criminal history, had absolutely no history of assaultive conduct or disorderly conduct, and had steadily worked throughout his life. The

circuit court explained that Colwell needed sex offender treatment and substance abuse treatment, and would have a lengthy period of supervision after he was released from prison to ensure that he continued to act in a positive manner. The circuit court explained its application of the various sentencing considerations in accordance with the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to a challenge to the sentence on appeal.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment, and relieve Attorney Helen M. Mullison of further representation of Colwell.

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

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

Diane M. Fremgen
Clerk of Court of Appeals