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**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**

January 8, 2014

*To*:

Hon. Wilbur W. Warren III
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Thomas J. Erickson
316 N. Milwaukee Street, Ste. 206
Milwaukee, WI 53202

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

Robert D. Zapf
District Attorney
Molinaro Bldg.
912 56th Street
Kenosha, WI 53140-3747

Sherman P. Last 595602
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

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2013AP2298-CRNM State of Wisconsin v. Sherman P. Last (L.C. # 2010CF1194)
2013AP2299-CRNM State of Wisconsin v. Sherman P. Last (L.C. # 2012CF747)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

In these consolidated appeals, Sherman Last appeals from judgments convicting him of possession of child pornography and felony bail jumping. Last'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). Last 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 records and counsel's report, we conclude that

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

there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments and remand with directions.[2] *See* WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Last's ***Alford*** pleas were knowingly, intelligently, and voluntarily entered and (2) whether the circuit court erroneously exercised its discretion at sentencing.[3]

With respect to the entry of the ***Alford*** pleas, the record shows that the circuit court engaged in a colloquy with Last that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.[4] In addition, a signed plea questionnaire and waiver of rights form was entered into the records. Finally, the court explained the effect of the ***Alford*** pleas and found strong evidence of Last's guilt before accepting them. We agree with counsel that any challenge to the entry of Last's ***Alford*** pleas would lack arguable merit.

[2] The judgment of conviction in Kenosha County Case No. 2010CF1194 indicates that Last entered a plea of no contest to the charge of possession of child pornography. As the transcript of the plea hearing makes clear, Last actually entered an ***Alford*** plea to that charge. *See* ***North Carolina v. Alford***, 400 U.S. 25 (1970). We remand the matter to the circuit court so that the judgment can be amended to reflect this.

[3] In the no-merit report, counsel uses the phrase "abuse of discretion." We have not used the phrase "abuse of discretion" since 1992, when our supreme court replaced the phrase with "erroneous exercise of discretion." *See, e.g.*, ***Shirk v. Bowling, Inc.***, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

[4] There are a few exceptions to this. For example, the circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Last's pleas are likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. WIS. STAT. § 971.08(2). The court also failed to inform Last of all of the constitutional rights he was waiving. This failure also does not present a potentially meritorious issue for appeal, as this information was clearly set forth in Last's signed plea questionnaire and waiver of rights form. The circuit court explicitly referenced that form during the plea colloquy and confirmed that Last had gone over its contents before signing it.

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 (citation omitted). In imposing an aggregate sentence of thirteen years of imprisonment, the court considered the seriousness of the offenses, Last'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. The sentence, which is well within the statutory maximum, 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. 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 Thomas J. Erickson of further representation in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representation of Last in these matters.

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*Diane M. Fremgen*
*Clerk of Court of Appeals*