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 III

January 14, 2014

To:

Hon. Steven R. Cray
Circuit Court Judge
711 N Bridge St
Chippewa Falls, WI 54729

Karen Hepfler
Clerk of Circuit Court
Chippewa County Courthouse
711 N. Bridge Street
Chippewa Falls, WI 54729

Steven H. Gibbs
District Attorney
Chippewa County District Attorneys Office
711 N. Bridge Street
Chippewa Falls, WI 54729

Ellen J. Krahn
Assistant State Public Defender
P. O. Box 7862
Madison, WI 53707

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

Michael T. Parkhurst 594195
Jackson Corr. Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2013AP1537-CRNM State of Wisconsin v. Michael T. Parkhurst (L. C. #2011CF403)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Michael Parkhurst has filed a no-merit report concluding there is no basis to challenge Parkhurst's conviction for sexual assault of a child under the age of sixteen. Parkhurst was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised and summarily affirm.

A criminal complaint alleged that on August 25, 2011, Parkhurst came to the Chippewa Falls Police Department and admitted to sexual activity with his five-year-old niece. A detective

interviewed the child, who confirmed Parkhurst had sexual contact with her. Parkhurst was charged with four counts of first-degree sexual assault of a child under age thirteen.

Pursuant to a plea agreement, the State amended the first count to a charge of sexual assault of a child under age sixteen, and further agreed to dismiss and read in the remaining three counts in exchange for a guilty or no contest plea. After accepting Parkhurst's guilty plea, the circuit court imposed a sentence consisting of three years' initial confinement and three years' extended supervision.

There is no manifest injustice upon which Parkhurst could withdraw his plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Parkhurst of the constitutional rights he waived by pleading, the elements of the offense and the potential penalties.[1] An adequate factual basis supported the conviction. The court specifically advised Parkhurst it was not bound by the parties' agreement and could impose the maximum penalty. The record shows the plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. ***Id.*** at 265-66.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered Parkhurst's character, the seriousness of the offense and the need to protect the

[1] Although the court's recitation of the elements of the offense did not further define the term sexual contact, counsel represents in the no-merit report that she cannot allege Parkhurst did not understand the definition of sexual contact as it relates to the elements of the offense charged. Parkhurst did not respond to this representation, thus forfeiting the issue. Furthermore, the complaint clearly stated hand contact, oral contact in office, oral contact in bathroom, and penis contact.

public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted the victim's young age, and a pattern of escalating behavior. The sentence imposed was authorized by law and not harsh or excessive.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Ellen Krahn is relieved of further representing Parkhurst in this matter.

Diane M. Fremgen
Clerk of Court of Appeals