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DISTRICT III

January 14, 2014

To:

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

2013AP1913-CRNM	State of Wisconsin v. Mathew A. Wagner
2013AP1914-CRNM	(L. C. Nos. 2012CF35, 2012CF47, 2012CF48)
2013AP1915-CRNM	

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

Counsel for Mathew Wagner filed a no-merit report concluding there is no basis for Wagner to withdraw his no contest and *Alford*¹ pleas or challenge the sentences imposed for three counts of sexual assault, one count of burglary, one count of impersonating an officer and two counts of bail jumping. Wagner was advised of his right to respond to the report and has not

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

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 basis for appeal.

The complaint in case no. 2012CF35 charged Wagner with two counts of sexual assault and one count of attempted sexual assault of fifteen-year-old A.K.H. It also charged three counts of sexual assault of C.G.V. when she was thirteen and fourteen years old. The information added an additional two counts of burglary. The complaint in case no. 2012CF47 charged two counts of disorderly conduct, two counts of felony bail jumping and impersonating an officer. The complaint in case no. 2012CF48 charged one count of sexual assault of six-year-old H.A.K. and two counts of felony bail jumping. When interviewed by the police, Wagner confirmed the statements from both A.K.H. and C.G.V.

Pursuant to a plea agreement, Wagner entered no contest pleas to one count of sexually assaulting A.K.H., one count of sexually assaulting C.G.V., impersonating an officer, and bail jumping. He entered *Alford* pleas to one count of sexually assaulting H.A.K. and the bail jumping charge associated with that offense. In return, the State agreed to cap its sentence recommendation to the amount of initial confinement recommended in the presentence investigation report, but in no event more than ten years' initial confinement and twenty years' extended supervision. On the other crimes to which Wagner pled no contest, the State agreed to recommend probation, and the remaining offenses charged in the two complaints were dismissed and read in for sentencing purposes. The court accepted the pleas and imposed a sentence of nine years and six months' initial confinement and ten years' extended supervision on the sexual assault of H.A.K., and concurrent terms of probation on the remaining offenses totaling fifteen years consecutive to the first sentence. The court granted sentence credit of twenty-three days on the prison sentence and 298 days on the probation offenses.

The record discloses no arguable manifest injustice upon which Wagner could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supported by a plea questionnaire and waiver of rights form, notified Wagner of the constitutional rights he waived by entering no contest and *Alford* pleas, the elements of the offenses and the potential penalties. The court reviewed the complaint in 2012CF48 and determined the facts were sufficient to provide strong proof of guilt to support Wagner's *Alford* pleas. *See State v. Johnson*, 105 Wis. 2d 657, 663, 314 N.W.2d 897 (Ct. App. 1981). As required in *State v. Hampton*, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Wagner that it was not bound by the parties' sentence recommendations and could impose the maximum sentences. The court also explained the effect of the read-in offenses and confirmed Wagner's understanding of the plea agreement and the court proceedings. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of valid no contest or *Alford* pleas constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentences. The court could have imposed consecutive sentences totaling over 165 years' imprisonment. The court appropriately considered the seriousness of the offenses, Wagner's character and the need to protect the public. The court found Wagner's family was overly protective and Wagner, age twenty, had never been employed. He continued to commit crimes while he was released on bail. The court found Wagner had "distorted cognitions, thoughts related to sexual offending against children." The court noted Wagner's display of negative factors such as impulsivity, risk taking, boredom, no guilt, selfishness and anger, and found Wagner posed a very high risk to reoffend. The court considered no improper factors and the sentences are not arguably so

excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Roberta Heckes is relieved of her obligation to further represent Wagner in these matters. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals