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DISTRICT III

January 22, 2014

To:

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

2013AP1712-CRNM State of Wisconsin v. Mitchell R. Pamonicutt (L. C. #2011CF1002)

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

Counsel for Mitchell Pamonicutt has filed a no-merit report concluding there is no basis to challenge Pamonicutt's conviction for second-degree sexual assault. Pamonicutt 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.

An Information charged Pamonicutt with second-degree sexual assault and incest. The State agreed to dismiss and read in the incest charge in exchange for a plea to second-degree sexual assault. The circuit court imposed a sentence consisting of eight years' initial confinement and five years' extended supervision.

There is no manifest injustice upon which Pamonicutt could withdraw his no contest 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 Pamonicutt of the constitutional rights he waived by pleading, the elements of the offense and the potential penalty. The court specifically advised Pamonicutt that it was not bound by the parties' agreement and could impose the maximum penalty. An adequate factual basis supported the conviction. 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 no contest 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 Pamonicutt's character, the seriousness of the offense and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court specifically emphasized Pamonicutt's "abysmal" history with alcohol abuse. The sentence imposed was much less than the forty years' imprisonment allowable by law and therefore presumptively neither harsh nor excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

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 Erica Bauer is relieved of further representing Pamonicutt in this matter.

Diane M. Fremgen
Clerk of Court of Appeals