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DISTRICT II

February 5, 2014

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

2013AP874-CRNM State of Wisconsin v. Christopher A. Sorenson (L.C. #2010CF556)

Before Brown, C.J., Reilly and Gundrum, JJ.

Christopher A. Sorenson appeals from a judgment of conviction for one count of first-degree sexual assault of a child under thirteen years of age, contrary to WIS. STAT. §§ 948.02(1)(e) and 939.50(3)(b) (2011-12).[1] Upon Sorenson's no contest plea, the trial court imposed a twenty-five year bifurcated sentence, with ten years of initial confinement and fifteen years of extended supervision. Sorenson's appellate counsel filed a no-merit report pursuant to

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

WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738 (1967). Sorenson did not respond. By order dated October 17, 2013, we directed counsel to file a supplemental no-merit report addressing the plea-taking procedure in this case.[2] Thereafter, upon our independent review of the supplemental no-merit report and the record as mandated by ***Anders*** and RULE 809.32, we disagreed with counsel's conclusion that there was no basis on which to challenge Sorenson's no contest plea. Specifically, we determined that the plea colloquy failed to ascertain Sorenson's understanding of the nature and essential elements of the crime to which he pled. In a December 10, 2013 order, we required appellate counsel to consult with Sorenson about this issue. Counsel has filed a second supplemental no-merit report asserting that after a lengthy discussion in which counsel explained to Sorenson the contents of our order, Sorenson does not wish to pursue plea withdrawal despite the defective plea colloquy. Counsel asserts that she explained to Sorenson that the failure to pursue plea withdrawal at this time would constitute a waiver of that issue on appeal and in the future. Counsel represents that Sorenson wishes to waive the plea issue and "affirmatively stated that he understood that he would not be able to raise the issue at a later date." We accept counsel's representation and conclude that Sorenson has waived any challenge to the legitimacy of his plea. Upon consideration of the original and supplemental no-merit reports and based on our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any sentencing issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

[2] Counsel's original no-merit report did not address the entry of Sorenson's no contest plea, explaining that "Mr. Sorenson's objective is not to withdraw his plea. Rather, he only wants a lesser sentence."

At the time of the offense, Sorenson was sixteen years old.[3] According to the criminal complaint, in response to a 2:30 a.m. sexual assault report, police met with A.C. who was "visibly very shaken" and stated that while asleep with her two-year-old daughter, D.A.B, she awoke to see Sorenson on top of D.A.B., "riding her in a humping motion." Both D.A.B. and Sorenson had their underwear and pants pulled down to their ankles. After a preliminary hearing, the State filed an information charging Sorenson with one count of first-degree sexual assault of a child. Sorenson eventually pled no contest to the charged offense.[4]

We agree with appellate counsel's analysis and conclusion that no issue of arguable merit arises from the trial court's exercise of sentencing discretion. In fashioning the sentence, the court considered the seriousness of the offense, the defendant's character and history, 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 court characterized the offense as a "serious grievous act" because of its violent nature, the victim's young age, and the impact on the victim and her family. As to Sorenson's character, the court acknowledged his youth, cognitive limitations, supportive family, and positive performance while out on bail, but emphasized that Sorenson had not exhibited remorse as evidenced by his unwillingness to acknowledge the offense and his "failure to, throughout this proceeding, to hold on and give a clear concise statement of what happened." The court determined that Sorenson was "a promising young person that is an incredibly high risk to the

[3] The record indicates that Sorenson was waived into adult court in connection with this case.

[4] Sorenson first sought to amend his not guilty plea to not guilty by reason of mental disease or defect (NGI plea) as defined in WIS. STAT. § 971.15. The trial court ordered an examination under WIS. STAT. § 971.16. The resultant report did not support an NGI plea, and the trial court granted multiple adjournments to permit Sorenson to obtain an independent § 971.16 examination. After receiving the independent report, defense counsel informed the court that Sorenson did not wish to pursue an NGI plea.

community" and stated that Sorenson's conduct was "truly frightening" because he was unable to understand and resist his urges. The sentencing court highlighted protection of the public as its primary objective, *see* ***State v. Gallion***, 2004 WI 42, ¶¶40-41, 270 Wis. 2d 535, 678 N.W.2d 197, and concluded that prison would further this objective by deterring Sorenson and others, and by punishing Sorenson so that he would "truly gain a respect for the fact that if you do it again, it only gets worse." Though it agreed that Sorenson made positive strides while out on bail under the close supervision of his parents, the court concluded that probation would not adequately protect the community:

> As you grow older - - and let me say it a different way - - an argument I often hear is young people can easily be controlled by their parents. And that to a great extent is what happened here while you were out on bond. But as you grow older, your comings and goings as an adult, [you will be] able to freely travel and avoid direct supervision.

After considering the parties' recommendations,[5] the sentencing court explicitly rejected probation as a viable disposition:

> In these matters, the law requires me to start at a situation where probation is the initial effort. However, my view is this is not a probation case, Mr. Sorenson. Considering the gravity of the offense, the aggravating factors which I've heard concerning the event cause me to find that probation for your rehabilitation is not an appropriate result of crafting a sentence.

The sentencing court identified proper objectives, considered relevant factors, explained its process, and reached a reasonable conclusion. ***State v. Odom***, 2006 WI App 145, ¶8, 294

[5] The State recommended the maximum sentence of sixty years, with forty years of initial confinement and twenty years of extended supervision. The presentence investigation report (PSI) recommended a total bifurcated sentence of fourteen to nineteen years, comprised of nine to thirteen years of initial confinement and five to six years of extended supervision. Sorenson recommended an imposed and stayed sentence with a term of probation.

Wis. 2d 844, 720 N.W.2d 695 (we will sustain a sentencing court's reasonable exercise of discretion even if this court or another judge might have reached a different conclusion). Further, the twenty-five year bifurcated sentence is well below the sixty-year maximum authorized by statute, *see* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507, and is not so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no meritorious challenge to the trial court's exercise of discretion at sentencing.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Sorenson this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Sara H. Roemaat is relieved from further representing Christopher A. Sorenson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals