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February 19, 2014

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

2013AP1189-CRNM State of Wisconsin v. Jonathan Trevell Lanier (L.C. #2011CF5656)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Jonathan Lanier appeals from a judgment convicting him of child enticement (exposing a sex organ) contrary to WIS. STAT. § 948.07(3) (2011-12).[1] Lanier's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967).

[1] All subsequent references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted. While the notice of appeal refers to the April 22, 2013 postconviction order, Lanier was not aggrieved by that order because the circuit court granted the relief he sought (the order vacated the requirement that Lanier pay the WIS. STAT. § 973.046 DNA surcharge). A party may not appeal if he or she is not aggrieved. ***State v. Perry***, 136 Wis. 2d 92, 95, 401 N.W.2d 748 (1987). The appeal does not encompass the April 22 order.

Lanier received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Lanier's no contest plea was knowingly, voluntarily and intelligently entered and had a factual basis; and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his no contest plea, Lanier answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.[2] The record discloses that Lanier's no contest plea was knowingly, voluntarily and intelligently entered, ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Lanier signed is competent evidence of a knowing and voluntary plea. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken.

[2] The circuit court did not advise Lanier that his plea waived the constitutional right to have twelve jurors agree on his guilt. Under the facts of this case, this is an insubstantial defect. ***State v. Taylor***, 2013 WI 34, ¶39, 347 Wis. 2d 30, 829 N.W.2d 482. The parties embarked on a jury trial and selected a jury before Lanier decided that he would plead no contest.

Hoppe, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Lanier's no contest plea.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Lanier to a seven-and-one-half year term. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In fashioning the sentence, the court considered the seriousness of the offense, Lanier's character, lack of remorse and history of other offenses, and the need to protect the public, deter others and punish Lanier. The felony sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. The court declared Lanier ineligible for the Challenge Incarceration Program, the Earned Release Program, and a risk reduction sentence. The court properly required Lanier to register as a sex offender. WIS. STAT. § 973.048(2m) (the court shall order a defendant convicted under WIS. STAT. § 948.07 to register as a sex offender). We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did 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, affirm the judgment of conviction and relieve Attorney Kaitlin Lamb of further representation of Lanier in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kaitlin Lamb is relieved of further representation of Jonathan Lanier in this matter.

Diane M. Fremgen
Clerk of Court of Appeals