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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 26, 2014

To:

Hon. Dale L. English
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

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

Leonard D. Kachinsky
Sisson & Kachinsky Law Offices
103 W. College Ave. #1010
Appleton, WI 54911-5782

Adam J. Ebert 543837
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2013AP2403-CRNM State of Wisconsin v. Adam J. Ebert (L.C. # 2012CF109)

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

Adam J. Ebert appeals from a judgment convicting him of second-degree sexual assault of a child. Ebert's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Ebert filed a response. After reviewing the record, counsel's report, and Ebert's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

The no-merit report addresses the following appellate issues: (1) whether Ebert's guilty plea was knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether the circuit court erred in denying Ebert's motion to suppress his statements to police.

With respect to the entry of the guilty plea, the record shows that the circuit court engaged in a colloquy with Ebert that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Ebert's guilty plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis."² *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing a sentence of ten years of initial confinement and five years of extended supervision, the court considered the seriousness of the offense, Ebert's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Ebert's prior sexual assault conviction, the court's decision does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

² Indeed, after pronouncing its sentence, the circuit court asked Ebert whether he understood why he received the sentence that he did. Ebert answered in the affirmative.

Finally, with respect to Ebert's motion to suppress, the record demonstrates that the circuit court properly denied it. Ebert had filed a motion challenging the admissibility of his inculpatory statements to police on grounds that they were custodial, involuntary, and without required *Miranda*³ warnings. Following a hearing on the matter, the circuit court denied Ebert's motion. We are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

As noted, Ebert filed a response to counsel's no-merit report. In it, he complains about issues we have already addressed (i.e., the circuit court's decision at sentencing and his inculpatory statements to police). He also complains that his attorney led him to believe that the circuit court would follow the prosecutor's recommendation of five years of initial confinement. The problem with this argument is that it is directly contradicted by the record. During the plea colloquy, the circuit court warned Ebert that it did not have to follow anyone's recommendation and could impose the maximum sentence, which included twenty-five years of initial confinement. When asked whether he understood that, Ebert replied, "Yes, Your Honor." In light of the foregoing, we are satisfied that Ebert's response does not present an issue of arguable merit.

Our independent review of the record does 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 and relieve Attorney Leonard Kachinsky of further representation in this matter.

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

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 Leonard Kachinsky is relieved of further
representation of Ebert in this matter.

Diane M. Fremgen
Clerk of Court of Appeals