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March 4, 2014

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

2013AP2161-CRNM State of Wisconsin v. Brock W. Baker (L. C. #2012CF4667)

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

Counsel for Brock Baker has filed a no-merit report concluding there is no basis to challenge Baker's convictions for first-degree sexual assault of a child under the age of thirteen and manufacturing THC. Baker 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.

A twelve-year-old girl reported that Baker had sexual intercourse with her on two occasions at his residence during the summer just prior to her starting seventh grade. When police executed a search warrant for Baker's residence, they detected the strong odor of marijuana and a marijuana growing operation was discovered. Baker was charged with two counts of first-degree sexual assault of a child under age thirteen and a third count of manufacturing THC.

In exchange for a guilty plea to counts one and three, the State agreed to recommend the dismissal and read-in of the other sexual assault count, as well as the dismissal of a misdemeanor count in another case. The State also agreed to recommend twenty years' initial confinement and ten years' extended supervision on count one, and two years' initial confinement and one year extended supervision on count three, concurrently. The circuit court imposed concurrent sentences consisting of seventeen years' initial confinement and eight years' extended supervision on the sexual assault count, and two years' initial confinement and one year extended supervision on the manufacturing count.

There is no manifest injustice upon which Baker 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, buttressed by the plea questionnaire and waiver of rights form, informed Baker of the constitutional rights he waived by pleading guilty, the elements of the offenses and the potential penalties. An adequate factual basis supported the convictions.

Baker signed the plea questionnaire and waiver of rights form that included the following: "I understand that the judge is not bound by any plea agreement or recommendation and may impose the maximum penalty." Baker represented to the court that he went over "every

one of the provisions" of the plea questionnaire with his lawyer. However, the court did not specifically inform Baker at the plea colloquy that it was not bound by the plea agreement, as required by ***State v. Hampton***, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14.

Nevertheless, this omission did not result in a due process violation as the court did not impose a larger sentence than what was recommended, and it dismissed the second count of sexual assault and the misdemeanor charge, so Baker received what he bargained for. *See* ***State v. Johnson***, 2012 WI App 21, ¶¶12-14, 339 Wis. 2d 421, 811 N.W.2d 441. In fact, Baker entered a favorable plea agreement in which the dismissal of the second count of sexual assault of a child reduced his potential prison exposure by sixty years. The State's cap on its sentence recommendation also reduced Baker's potential prison exposure substantially, not to mention the reduction of potential penalties arising from the dismissal of the unrelated misdemeanor offense as part of the negotiation. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty 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 Baker's character, the seriousness of the offenses and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The sentence imposed was far less than authorized 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 George Tauscheck is relieved of further representing Baker in this matter.

Diane M. Fremgen
Clerk of Court of Appeals