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**DISTRICT IV**

May 19, 2014

To:

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

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2012AP2419-CRNM      State of Wisconsin v. Joao L. Frasier (L.C. #2011CM2454)

Before Lundsten, J.

Joao Frasier appeals a judgment convicting him of two counts of fourth-degree sexual assault. He also appeals an order denying his postconviction motion. Attorney Michael Rosenberg has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12);<sup>1</sup> *see also Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version, unless otherwise noted.

429 (1988). The no-merit report addresses the single issue of whether the circuit court properly exercised its discretion in requiring Frasier to register as a sex offender. Frasier was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, the record discloses no arguable basis for withdrawing Frasier's guilty pleas. The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Frasier completed, informed Frasier of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering guilty pleas. The court confirmed Frasier's understanding that the court was not bound by the terms of the plea agreement. *See State v. Hampton*, 2004 WI 107, ¶¶2, 20, 38, 274 Wis. 2d 379, 683 N.W.2d 14. The court also confirmed that Frasier was not under the influence of any drugs, alcohol, or medication that would interfere with his ability to understand the proceedings. Further, the court found that a sufficient factual basis existed in the criminal complaint to support Frasier's pleas. The record shows that the pleas were knowingly, voluntarily, and intelligently made, such that there would be no merit to challenging the pleas on appeal. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

A challenge to Frasier's sentence would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Frasier was afforded an opportunity to address the court personally, and he did so. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Frasier to six months in jail on each count, to be served consecutively, and required him to register as a sex offender. Frasier filed a postconviction motion for sentence modification, requesting that the court withdraw the requirement that he register as a sex offender. The circuit court denied the motion as to the case at issue on appeal, but removed the sex offender registration requirement from the sentence in a companion case, Dane County Circuit Court Case No. 2012CM230.

With respect to the jail sentences, the terms imposed were within the applicable penalty ranges, and the total imprisonment period constituted about 67% of the maximum exposure Frasier faced. *See* WIS. STAT. §§ 940.225(3m) (classifying fourth-degree sexual assault as a Class A misdemeanor); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor) (2009-10 Stats.). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentence imposed here was not “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted).

Regarding the portion of the sentence that required Frasier to register as a sex offender, the no-merit report addresses the issue in detail and examines the circuit court’s underlying findings. We are satisfied that the no-merit report properly analyzes the sex offender registration issue as without merit, and this court will not discuss it further.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction or the order denying Frasier's postconviction motion. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Michael Rosenberg is relieved of any further representation of Joao Frasier in this matter pursuant to WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*