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June 4, 2014

To:

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

2014AP577-CRNM State of Wisconsin v. Fredrick G. Brown (L.C. #2012CF368)

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

Fredrick G. Brown appeals a judgment entered upon his no-contest plea to one count of exposing a child to harmful material, contrary to WIS. STAT. § 948.11(2)(a)1. (2011-12).¹ Brown's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Brown was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and our independent review of the

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

record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and that the appeal may be disposed of summarily. *See* WIS. STAT. RULE 809.21. We accept the no-merit report, affirm the judgment of conviction, and relieve Attorney John C. Bachman of further representing Brown in this matter.

Brown was charged with sending photos of himself via a cellphone to a girl he knew was thirteen years old. One photo was of his shirtless upper body; the other was of his erect penis. After pleading no contest to exposing a child to harmful material, the circuit court withheld sentence and placed him on two years' probation, consecutive to his extended supervision ordered in a Chippewa county case.

This no-merit appeal followed. The report concludes there would be no basis for either withdrawing his plea or challenging his sentence. We agree.

The record discloses no arguable basis for Brown to withdraw his no-contest plea.² Brown executed a plea questionnaire and waiver of rights form that, along with the court's thorough colloquy, informed him of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential sentence of three and a half years' imprisonment and a \$10,000 fine. The court specifically clarified that it was not bound by the plea negotiations or the presentence writer's recommendation and could impose the maximum sentence, and ensured that he understood he might be required to register as a sex offender. The record shows that the

² The record contains a status conference transcript dated November 14, 2013—four months after sentencing—in which Brown expresses a desire to withdraw his plea. We are satisfied that the date is in error, however, because Judge Lisa Stark presided over the status conference and she left the circuit court bench in April 2013. Further, the transcript references a November 29 trial date. An August 23, 2012 CCAP entry indicates that a jury trial was set for November 29, 2012.

plea was knowingly, voluntarily and intelligently entered. *See* WIS. STAT. § 971.08(1); *see also State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14.

The record also discloses no basis for challenging the court’s sentencing discretion. The court implicitly determined that protection of the public and rehabilitation of the defendant were the most important sentencing objectives. It observed that Brown had a “pretty rough upbringing” and commended him for working on completing his HSED. Along with ordering Brown to provide a DNA sample, register as a sex offender, and have no contact with the victim, the court adopted the parties’ and the PSI’s recommendations of a withheld sentence and two years’ probation as a “pretty reasonable resolution” to the case. These are legally recognized objectives and meet the criteria set out in *State v. Gallion*, 2004 WI 42, ¶¶38-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court waived the DNA surcharge due to Brown’s inability to pay it now or in the foreseeable future.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney John C. Bachman is relieved of his obligation to further represent Brown in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals