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DISTRICT II

July 23, 2014

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

2013AP2721-CRNM State of Wisconsin v. Michael R. Jensen (L.C. #2012CF295)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Michael R. Jensen pled guilty to first-degree child sexual assault, lifetime supervision, contrary to WIS. STAT. §§ 948.02(1)(e) and 939.615(2)(a) (2011-12).[1] He appeals the judgment of conviction and the order denying his motion for postconviction relief. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Jensen was served with a copy of the report, but has not filed a response

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

despite being granted three extensions of time due to his complaints of limited access to legal materials.[2] Based upon the report and our independent review of the record as required by ***Anders*** and RULE 809.32, we conclude that no issue of arguable merit could be raised on appeal. We affirm the judgment and order, accept the no-merit report, and relieve Attorney Kaitlin A. Lamb of further representing Jensen in this matter.

Jensen was charged with first-degree child sexual assault, as a persistent repeater, lifetime supervision, for acts involving a close friend's seven-year-old daughter. In exchange for his guilty plea, the State agreed to drop the persistent-repeater enhancer, which carries with it a sentence of life without possibility of parole, and to recommend "substantial" prison time instead. The court sentenced him to twenty years' confinement and fifteen years' extended supervision. Postconviction, Jensen moved for resentencing on grounds that the court relied on inaccurate information in the presentence investigation report regarding four Milwaukee county offenses he claimed he did not commit. The motion was denied after a hearing. This no-merit appeal followed.

The no-merit report concludes that any effort on Jensen's part to withdraw his plea to correct a manifest injustice or to challenge his sentence as an erroneous exercise of discretion or in reliance on inaccurate information would be without arguable merit. We agree.

[2] The last order, granting a six-week extension, advised Jensen that this court "will accept an informal letter or memorandum as a response to the no-merit report," that the response "does not require citations to the record or to authority," and that he need only "direct[] this court's attention to issues [he] believes should be raised on appeal."

There is no arguable basis for Jensen to withdraw his guilty plea. He executed a plea questionnaire and waiver-of-rights form that, along with the court's thorough colloquy,[3] informed him of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential sentence of sixty years' imprisonment. The court specifically clarified that it was not bound by the plea negotiations and could impose the maximum sentence, and ensured that Jensen understood he could be placed on lifetime sex offender registration. Our independent review of the record satisfies us that the plea was knowingly, voluntarily, and intelligently entered under WIS. STAT. § 971.08(1) and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and that no arguable issue could be raised that would satisfy Jensen's "heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice," ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997).

The no-merit report also considers the circuit court's exercise of discretion at sentencing. Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether that discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Here, the court carefully examined the gravity of the Jensen's admitted offense, his character, and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court observed that, despite already having served a seven-year sentence for a past child sexual assault, Jensen has gone on to reoffend.

[3] Although the court did not provide the required advisement regarding possible consequences for non-citizens, *see* WIS. STAT. § 971.08(1)(c), we conclude this issue has no arguable merit. Jensen's plea withdrawal motion on this basis would have to allege that the circuit court failed to advise him of the plea's deportation consequences and that his plea "is likely to result in [his] deportation, exclusion from admission to this country[,] or denial of naturalization." Sec. 971.08(2). Jensen was born and raised in Wisconsin. Nothing in the record suggests he is not a United States citizen.

Jensen's twenty-year sentence is not so excessive, unusual, and disproportionate to the offense committed as to shock public sentiment. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court's "rational and explainable basis" for the sentence satisfies this court that discretion in fact was exercised, ***Gallion***, 270 Wis. 2d 535, ¶39 (citation omitted), and that no issue of merit could arise from this point.

Finally, we agree with appellate counsel that no meritorious challenge could be made that Jensen's postconviction motion claiming he was sentenced on inaccurate information was wrongly denied. The basis for the motion was that at sentencing, the court mentioned four Milwaukee county offenses (three disorderly conducts and one trespassing) listed in the PSI, which Jensen insisted he had not committed. Postconviction counsel's investigator could find no court record of any Milwaukee county convictions.

The sentencing court simply referred to the four offenses, which occurred between 1981 and 1983, as it was reciting Jensen's lengthy record and run-ins with the law, beginning as a juvenile. The postconviction motion hearing transcript shows that the court called them "charges," not convictions, then surmised that, as the penalties listed were fines or a few days is jail, the charges likely were for ordinance violations. The transcript confirms that the court devoted its sentencing rationale to the severity of this offense and to Jensen's other serious crimes and the need to protect the public. Even if the Milwaukee county information was not accurate, Jensen could not make a viable claim that the court relied on it in fashioning his sentence. *See* ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1.

Our review of the record discloses no other potential issues for appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Kaitlin A. Lamb is relieved of further representing Jensen in this matter.

Diane M. Fremgen
Clerk of Court of Appeals