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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:

2013AP2651-CRNM State of Wisconsin v. Peter A. Jensen (L.C. # 2012CF453)

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

Peter Jensen appeals from a judgment convicting him of second-degree sexual assault of a child contrary to WIS. STAT. § 948.02(2) (2011-12)¹ and incest with a child contrary to WIS. STAT. § 948.06(1m). Jensen's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Jensen received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we

summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Jensen's guilty pleas were knowingly, voluntarily and intelligently entered and had a factual basis; and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of the guilty pleas, Jensen answered questions about the pleas and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Jensen's guilty pleas were knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Jensen signed is competent evidence of knowing and voluntary pleas. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. The circuit court gave the advisements required under *State v. Straszowski*, 2008 WI 65, ¶5, 310 Wis. 2d 259, 750 N.W.2d 835, for the counts being

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

dismissed and read-in. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Jensen's guilty pleas.

With regard to the sentences, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Jensen to consecutive seventeen and one-half year terms for each offense (ten years of initial confinement and seven and one-half years of extended supervision). In fashioning the sentences, the court considered the seriousness of the offenses, Jensen's character and history of other poor conduct, the impact on the victim, and the need to protect the public and deter others. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court refused to declare Jensen eligible for either the Challenge Incarceration Program or the Earned Release Program. The felony sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did 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, affirm the judgment of conviction and relieve Attorney Ellen Krahn of further representation of Jensen in this matter.

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 Ellen Krahn is relieved of further representation of Peter Jensen in this matter.

Diane M. Fremgen
Clerk of Court of Appeals