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September 24, 2014

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

2014AP644-CRNM State of Wisconsin v. Raymond A. Myers (L.C. #2011CF88)

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

Raymond A. Myers appeals from a judgment convicting him of first-degree sexual assault of a child—sexual contact with a person who has not attained the age of thirteen years. Myers' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Myers filed a response. After reviewing the

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

record, counsel's report, and Myers' response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Myers' no contest plea was knowingly, intelligently, and voluntarily entered and (2) whether the circuit court properly exercised its discretion at sentencing.

With respect to the entry of Myers' no contest plea, the record shows that the circuit court engaged in a colloquy with Myers that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Myers' no contest plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing a sentence of twenty years of imprisonment, the court considered the seriousness of the offense, Myers' character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Myers' prior criminal record, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). In any event, because Myers affirmatively approved of the length of the sentence by means of a joint recommendation, he cannot attack it on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App.

1989). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

As noted, Myers filed a response to counsel's no-merit report. In it, he asks this court to consider converting the remainder of his initial confinement time to extended supervision so that he can take care of his ailing mother. He also appears to question the veracity of the victim's mother. We are satisfied that Myers' response does not present an issue of arguable merit. To the extent that he is making such a claim, his mother's health is not a new factor warranting sentence modification because it is not a fact "highly relevant to the imposition of sentence." *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). Moreover, Myers forfeited the opportunity to explore and raise defenses by entering his no contest plea. See *State v. Kelty*, 2006 WI 101, ¶18 n.11, 294 Wis. 2d 62, 716 N.W.2d 886.

Our independent review of the record does 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 and relieve Attorney Eileen A. Hirsch of further representation 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 Eileen A. Hirsch is relieved of further representation of Myers in this matter.

Diane M. Fremgen
Clerk of Court of Appeals