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DISTRICT II

November 19, 2014

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

2014AP1385-CRNM State of Wisconsin v. Bruno L. Wojtalewicz (L.C. #2013CF262)

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

Bruno L. Wojtalewicz appeals from a judgment of conviction for two counts of repeated sexual assault of the same child. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Wojtalewicz received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record,

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

we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Wojtalewicz was charged with sex crimes after it was discovered that he been sexually abusing the young sons of his girlfriend between 2004 and 2010.[2] He entered a guilty plea to two counts of repeated sexual assault of the same child and the five other charges were dismissed as read-ins. As stated on the record at the plea hearing and in the plea questionnaire, the prosecution agreed to recommend twenty years' initial confinement and thirty years' extended supervision on each conviction to be served concurrently. At sentencing, and because the maximum sentence for each crime was forty years, the prosecution recommended ten years' initial confinement and fifteen years extended supervision on each conviction to be served consecutively. Wojtalewicz was sentenced to consecutive terms of fifteen years' initial confinement and ten years of extended supervision, for a total sentence of fifty years.

The no-merit report addresses the potential issues of whether Wojtalewicz's plea was freely, voluntarily and knowingly entered, whether there could be a claim that Wojtalewicz was sentenced upon inaccurate information, whether the sentence was the result of an erroneous exercise of discretion, whether Wojtalewicz was entitled to any sentence credit, and whether any new factor exists to support a motion for sentence modification. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

[2] Wojtalewicz was charged with four counts of repeated sexual assault of the same child for three different periods of time and three counts of exposing a child to harmful material, as a repeater.

The circuit court did not address Wojtalewicz during the plea colloquy regarding the impact of the read-in offenses at sentencing. *See* ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835 (the circuit court "should advise a defendant that it may consider read-in charges when imposing sentence but that the maximum penalty of the charged offense will not be increased; that a circuit court may require a defendant to pay restitution on any read-in charges; and that the State is prohibited from future prosecution of the read-in charge."). Here the read-in charges involved the same victims. The circuit court did not discuss the read-in charges at sentencing other than to acknowledge their existence and no restitution was imposed. If the circuit court was required to make advisements about the read-ins charges,[3] Wojtalewicz was not affected. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (an insubstantial defect in the plea colloquy does not support plea withdrawal). It might appear that the prosecution violated the plea agreement since its sentencing recommendation was for consecutive rather than concurrent terms. The no-merit report does not make this suggestion but notes:

> It is unclear from the record why the parties apparently thought that a 50-year aggregate sentence would be available for each Class C felony. The charging documents, the plea questionnaire, and the plea colloquy all provided that the maximum sentence for each conviction was 40 years. Regardless, Mr. Wojtalewicz received the benefit of the plea agreement: the state's recommendation of 20 years of confinement plus 30 years of

[3] It appears unsettled whether the advisements outlined in ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835, are part of the circuit court's duties during a plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶19, 23, 317 Wis. 2d 161, 765 N.W.2d 794 (claim that the circuit court failed to notify the defendant that the read-in offenses could be considered at sentencing targeted the court's mandatory plea colloquy duties); ***State v. Lackershire***, 2007 WI 74, ¶28 n.8, 301 Wis. 2d 418, 734 N.W.2d 23 (the supreme court declined to adopt the court of appeals' characterization of read-ins as "collateral consequences" and expressly declined to address a circuit court's obligation to explain the nature of read-in offenses).

> supervision, and the dismissal of two Class B and three enhanced Class I felony counts.

For reasons highlighted in the no-merit report we conclude that no issue of arguable merit exists with respect to the prosecution's sentencing recommendation. Despite the error in reciting at the plea hearing how the sentence recommendation could be bifurcated as concurrent sentences, the fundamental nature of Wojtalewicz's bargain—recommendation of an aggregate sentence totaling no more than fifty years—was preserved. There is no merit to a claim that Wojtalewicz was deprived of the benefit of his bargain or that a material breach of the plea agreement occurred which trial counsel failed to object to. *See* ***State v. Lichty***, 2012 WI App 126, ¶¶22, 24, 344 Wis. 2d 733, 823 N.W.2d 830.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Wojtalewicz further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven D. Grunder is relieved from further representing Bruno L. Wojtalewicz in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals