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DISTRICT III

January 21, 2015

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

2014AP1040-CRNM State of Wisconsin v. Dustin W. Rosenkranz (L. C. #2013CF160)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Dustin Rosenkranz filed a no-merit report concluding there is no arguable basis for Rosenkranz to withdraw his guilty plea or challenge the sentence imposed for second-degree sexual assault of a child under sixteen years of age. Despite being granted an extension for filing a response, Rosenkranz has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged Rosenkranz with one count of having sexual contact with a twelve-year-old boy. The victim told an officer he continuously asked Rosenkranz to stop, but Rosenkranz responded, “I know you don’t want to, but I want to. You’re not the boss of me; I’m the boss of you.” The complaint also recounts the officer’s interview of Rosenkranz in which Rosenkranz admitted to two incidents of sexual contact with the victim.

Based on a social worker’s letter questioning Rosenkranz’s competency to stand trial, the court ordered a psychological evaluation of Rosenkranz. The psychologist submitted a report detailing Rosenkranz’s understanding of the charge, penalties and court procedures. He concluded Rosenkranz was competent to stand trial. Rosenkranz and his attorney decided not to challenge that conclusion.

Pursuant to a plea agreement, Rosenkranz entered a guilty plea to second-degree sexual assault of a child in return for the State’s sentencing recommendation of four years’ initial confinement and five years’ extended supervision. The court imposed a sentence of three years’ initial confinement and four years’ extended supervision.

The record discloses no arguable manifest injustice upon which Rosenkranz could withdraw his guilty plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court’s colloquy, aided by a Plea Questionnaire/Waiver of Rights form, established Rosenkranz’s understanding of the elements of the offense, the potential penalties and the constitutional rights he waived by pleading guilty. Rosenkranz’s counsel indicated he went over the plea questionnaire with Rosenkranz on more than one occasion, including the day before the plea hearing. Counsel also alluded to Rosenkranz’s letter to the court in which he admitted having sexual contact with the victim on two occasions. Rosenkranz indicated he

understood each of his constitutional rights, the elements of the offense and the maximum penalties. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court notified Rosenkranz it was not required to follow the parties' sentence recommendation. The record shows the plea was knowingly, voluntarily and intelligently entered. *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentence. The court could have imposed a sentence of forty years' imprisonment and a \$100,000 fine. The court specifically considered the seriousness of the offense, Rosenkranz's 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 considered no improper factors, and the seven-year sentence is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Ralph Sczygelski is relieved of his obligation to further represent Rosenkranz in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals