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DISTRICT IV

January 26, 2015

To:

Hon. Lewis Murach
Reserve Judge

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

2013AP77-CRNM State of Wisconsin v. Jay A. Hough (L.C. # 2009CF239)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Jay Hough appeals two related judgments convicting him of exposing genitals to a child and causing mental harm to a child. Attorney Suzanne Hagopian has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of Hough's pleas and sentences. Hough was sent a copy of the report, but

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

has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 288-90, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Hough entered no-contest pleas pursuant to a negotiated agreement that was presented in open court. In exchange for Hough's pleas, the State agreed to dismiss three counts of first-degree sexual assault of a child; to make a joint sentencing recommendation for time served on a misdemeanor, a withheld sentence subject to seven and a half years of probation on the remaining felony count; and not to request that Hough be required to register as a sex offender.

Hough provided the court with a signed plea questionnaire, with attached jury instructions. The circuit court used that form throughout its plea colloquy, inquiring into Hough's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Hough's understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72. Hough indicated to the court throughout the colloquy that he understood the information set forth in the various sections of the plea questionnaire and the elements of the

offenses set forth in the jury instructions, and he is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaint, police and social services reports, the victim's videotaped statement, the victim's impact statement, and the preliminary hearing provided a sufficient factual basis for the pleas. There is nothing in the record to suggest that counsel's performance was in any way deficient, and Hough has not alleged any other facts that would give rise to a manifest injustice.

A challenge to Hough's sentences would also lack arguable merit because the court accepted the parties' joint recommendation for time served on the misdemeanor exposure count and probation on the felony mental harm count, with 453 days remaining for sentence credit in the event of a revocation. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he "affirmatively approved"). Prompted by a request from the victim's father as well as the court's own concerns, the court did deviate from the joint recommendation by requiring that Hough register as a sex offender. Before doing so, however, the court made an extensive record as to why it deemed the offenses to have been sexually motivated, and why the public interest would be served by having Hough register.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that counsel is relieved of any further representation of the defendant in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals