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DISTRICT I

February 13, 2015

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

2014AP2478-CRNM State of Wisconsin v. Duane M. Steffes (L.C. #2013CF3871)

Before Curley, P.J., Kessler and Brennan, JJ.

Duane M. Steffes appeals from a judgment of conviction, entered upon his guilty plea, on one count of repeated sexual assault of a child. Appellate counsel, Randall E. Paulson, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2011-12).[1] Steffes was advised of his right to file a response, but has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's

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

report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

According to the criminal complaint, police spoke with victim M.A., who reported that Steffes would rub his penis between her buttocks until he ejaculated. Steffes was a friend of M.A.'s mother, who had allowed Steffes to live with them. The assaults began while they were living in a blue house, which was determined to be some time starting around M.A.'s seventh birthday in 2007. The sexual assaults stopped when they moved into the home of Steffes' sister, but resumed when they relocated to M.A.'s grandmother's house.

At the grandmother's house, Steffes continued to assault M.A. by placing his penis between her buttocks. M.A. reported that sometime when she was twelve years old, Steffes told her to kneel on the bed, and he put his penis in her mouth. When she gagged, he told her to "jack him off." He then began putting his penis "in her hole," which is apparently a reference to anal rather than vaginal intercourse. M.A. reported that Steffes would have sex with her "every night or two."

When he was confronted by police, Steffes admitted having sexual contact with M.A. more than ten times, beginning when she was seven and ending only days before the police interview. He admitted a single instance of fellatio and told police he would often rub M.A.'s buttocks or the outside of her vagina, but denied there was any penetration or intercourse. Steffes was charged with one count of repeated sexual assault of a child.

Steffes agreed to plead guilty. The State agreed to recommend twenty years' initial confinement and five years' extended supervision. Steffes would be free to argue for any

sentence. The circuit court accepted the plea and sentenced Steffes to twenty-five years' initial confinement and ten years' extended supervision.

The first potential issue counsel identifies is whether there is any arguable merit to a challenge to the validity of Steffes' guilty plea. Our review of the record—including the plea questionnaire and waiver of rights form, attached jury instructions and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and subsequent cases, as collected in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In particular, we note that the circuit court took great care to ensure there was a sufficient factual basis for at least three instances of sexual contact, necessary to fulfill the elements of repeated sexual assault of a child. Ultimately, defense counsel summarized that Steffes "would admit to engaging in sexual contact … for the purposes of arousal," and Steffes acknowledged that he engaged in such conduct on at least three occasions. There is no arguable merit to a claim that the circuit court failed to fulfill its obligations in accepting a plea or that Steffes' plea was anything other than knowing, intelligent, and voluntary.

The other issue counsel raises is whether the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of

the public, and may consider several subfactors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23.

The circuit court noted that it was a serious offense to take a seven-year-old through years of sexual assault. The circuit court considered that there were "sad events" in Steffes' past—his daughter had died very young, and Steffes himself had been a sexual assault victim. However, these factors were overwhelmed by aggravating circumstances. Specifically the circuit court noted that this was an aggravated case because Steffes had been an assault victim but, nevertheless, made another child suffer. Further aggravating the situation was that Steffes had claimed to the presentence investigator that he was the victim and it was M.A. who assaulted him and who initiated the sexual contact. Also, as a result of Steffes' abuse, M.A.—who was placed in foster care because of her mother's cognitive limitations—had become a runaway, fleeing multiple placements.

The circuit court explained that probation would unduly depreciate the seriousness of the offense. It noted that Steffes clearly has treatment needs, particularly with respect to sexual conduct and academics, and that these should be provided in a structured and confined setting. The circuit court also noted a strong need to protect the public. When the State inquired whether the thirty-five-year sentence was what the court intended, given that the State had only recommended twenty-five years, the circuit court explained that it believed Steffes has overwhelming needs and, based on Steffes' statements to the presentence investigation report author, there was a strong need for longer confinement.

The maximum possible sentence Steffes could have received was sixty years' imprisonment. The sentence totaling thirty-five years' imprisonment is well within the range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the sentencing court's discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Randall E. Paulson is relieved of further representation of Steffes in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals