



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

March 3, 2015

To:

Hon. Gregory B. Gill Jr.
Circuit Court Judge
320 S Walnut St
Appleton, WI 54911

Carrie A. Schneider
District Attorney
320 S. Walnut St.
Appleton, WI 54911

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Timothy T. O'Connell
O'Connell Law Office
P.O. Box 1625
Green Bay, WI 54305-1625

James G. Pittmon 440676
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2014AP724-CRNM State of Wisconsin v. James G. Pittmon (L. C. #2010CF836)

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

Counsel for James Pittmon has filed a no-merit report concluding no grounds exist to challenge Pittmon's conviction for repeated sexual assault of child, with at least three violations of first- or second-degree sexual assault. Pittmon was informed of his right to file a response to the no-merit report and 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 merit

to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.¹

The State charged Pittmon with two counts of repeated sexual assault of a child and one count of sexual assault of a child under age sixteen. In exchange for his no contest plea to one count of repeated sexual assault of a child, the State agreed to dismiss and read in the remaining counts. The State also agreed it would recommend a twenty-year sentence, with ten years' initial confinement followed by ten years' extended supervision. Out of a maximum possible forty-year sentence, the court imposed a twenty-five-year sentence, consisting of fifteen years' initial confinement and ten years' extended supervision.

Pittmon filed a postconviction motion seeking resentencing before a different judge, claiming the State had breached the plea agreement with respect to the extended supervision portion of its sentence recommendation. The circuit court denied the motion and, on appeal, this court reversed the judgment and order and remanded the matter for resentencing before a different judge. *See State v. Pittmon*, No. 2012AP2355-CR, unpublished slip op. (WI App June 11, 2013). At the resentencing hearing, the State recommended ten years' initial confinement and ten years' extended supervision, consistent with the plea agreement. The court ultimately imposed a twenty-five-year sentence, consisting of fifteen years' initial confinement and ten years' extended supervision, with 1374 days of sentence credit. This no-merit appeal follows.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The no-merit report addresses whether there is any arguable basis for withdrawing Pittmon's no contest plea. A material and substantial breach of the plea agreement entitles a defendant to either vacation of the plea agreement or resentencing. *State v. Williams*, 2002 WI 1, ¶2, 249 Wis. 2d 492, 637 N.W.2d 733. Because Pittmon elected resentencing rather than plea withdrawal following the State's plea-agreement breach, our review could be limited to the resentencing. However, even on review of the plea, the record reveals no arguable basis for plea withdrawal.

The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Pittmon completed, informed Pittmon of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no contest plea. The court confirmed Pittmon's understanding that it was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also advised Pittmon of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Pittmon committed the crime charged. The record shows the plea was knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Pittmon's character, including his criminal history; the need to protect the public; and the mitigating factors Pittmon raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that Pittmon's

sentence is 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 pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Timothy T. O'Connell is relieved of further representing Pittmon in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals