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DISTRICT II

July 1, 2015

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

2014AP2589-CRNM State of Wisconsin v. Dale E. Voss (L.C. #2012CF923)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Russell D. Bohach, counsel for Dale E. Voss, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967), concluding that no grounds exist to challenge Voss's convictions for two counts of first-degree sexual assault of a child/sexual contact with a person under thirteen. Voss was advised of his right to file a response but, despite being granted an extension of time, he has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders*** and

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

RULE 809.32, we conclude that there is no arguable merit to any issue that could be raised on appeal. The judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

A registered sex offender since 1991 for a similar conviction, Voss was charged with seven counts of first-degree sexual assault of a child/sexual contact with a person under thirteen. The assaults, which occurred over a five-year period, involved his daughter, stepdaughter, and two of their friends. Voss entered a no-contest plea to Count 1, involving one of the friends, and a guilty plea to Count 2, involving his stepdaughter. The other five counts were dismissed and read in for sentencing. The circuit court imposed a global sentence of twenty years' confinement followed by ten years' extended supervision. This no-merit appeal followed.

The no-merit report considers whether there is arguable merit to a challenge to Voss's no-contest and guilty pleas. We agree with appellate counsel that there is not.

The circuit court substantially followed WIS. STAT. § 971.08 to ensure that Voss's pleas were knowingly, voluntarily, and intelligently entered.[2] The court ascertained that he understood the elements of the charges to which he was pleading, the potential punishments he faced, the constitutional rights he was giving up, and that it was not bound by sentencing recommendations. *See* § 971.08(1); ***State v. Bangert***, 131 Wis. 2d 246, 260-62, 389 N.W.2d 12 (1986); ***State v. Hampton***, 2004 WI 107, ¶¶24, 33, 38, 274 Wis. 2d 379, 683 N.W.2d 14.

[2] The circuit court failed to include the mandatory advisory regarding potential citizenship consequences. *See* WIS. STAT. § 971.08(1)(c); *see also* ***State v. Douangmala***, 2002 WI 62, ¶31, 253 Wis. 2d 173, 646 N.W.2d 1. The plea questionnaire/waiver of rights form contains the deportation advisory. Voss told the court he reviewed the form with his counsel and understood everything on it. Also, the presentence investigation report indicates that Voss was born in Minnesota and has always lived in the United States. No arguable issue could be raised that his pleas are likely to result in deportation. *See* § 971.08(2); *see also* ***Douangmala***, 253 Wis. 2d 173, ¶¶25, 31.

Besides the substantive colloquy, the court looked to the plea questionnaire/waiver of rights form Voss signed and verified his understanding. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. When Voss stated that he was not getting pain medication while in jail, the court queried him further about his level of pain. Voss assured the court that he was certain he wanted to continue with the hearing. The court observed that he appeared in no obvious physical distress and had been "completely responsive" throughout the colloquy. A review of the record discloses nothing that qualifies as the "manifest injustice" a defendant must establish to withdraw a plea after sentencing. *See* ***State v. Cain***, 2012 WI 68, ¶26, 342 Wis. 2d 1, 816 N.W.2d 177. A challenge to the pleas would be meritless.

The report also examines whether a nonfrivolous issue exists with regard to the circuit court's exercise of its sentencing discretion. There would be no arguable basis to claim an erroneous exercise of discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶¶41-43 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether that discretion was erroneously exercised. ***Gallion***, 270 Wis. 2d 535, ¶17. The court here fully addressed the primary sentencing factors, ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999), and the relevant sentencing objectives, ***Gallion***, 270 Wis. 2d 535, ¶¶40-41. The weight to be given them is a determination particularly within the court's discretion. ***Ocanas***, 70 Wis. 2d at 185.

The court set forth a "rational and explainable basis" for its decision. *See* ***Gallion***, 270 Wis. 2d 535, ¶76 (citation omitted). It discussed at length the seriousness of Voss's offenses,

expressed dismay that his original sex-offender treatment proved insufficient, and emphasized the need for a sentence that would protect the public and punish him. It noted that twenty years' confinement should accomplish protection, punishment, and needed sex-offender treatment.

After agreeing to plead to two of seven counts, Voss shaved his exposure from 420 to 120 years. With the court's thorough explanation in mind, we cannot say that the thirty-year sentence imposed "is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas***, 70 Wis. 2d at 185. Our independent review of the record reveals no other nonfrivolous issues. Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Russell D. Bohach is relieved of further representing Dale E. Voss in this matter.

Diane M. Fremgen
Clerk of Court of Appeals