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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:

2014AP2340-CRNM State of Wisconsin v. Ricky J. Cornell (L.C. #2013CF449)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Ricky Cornell appeals from a judgment convicting him of first-degree sexual assault of a child under thirteen (sexual contact) contrary to WIS. STAT. § 948.02(1)(e) (2013-14).¹ Cornell's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Cornell received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm

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

the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Cornell's no contest plea was knowingly, voluntarily, and intelligently entered and had a factual basis and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his no contest plea, Cornell answered questions about the pleas and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Cornell's no contest plea was knowingly, voluntarily, and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Cornell signed is competent evidence of a knowing and voluntary plea. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Cornell's no contest plea.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to

sentencing Cornell to a twenty-year term (thirteen years of initial confinement and seven years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense, Cornell's character and history of other sex offenses against children, the impact on the victim, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Because he was convicted of a crime under WIS. STAT. § 948.02, Cornell was not eligible for the Challenge Incarceration Program or the Earned Release Program. WIS. STAT. § 973.01(3g), (3m). The felony sentence complied with § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. No issue with arguable merit could arise from the imposition of the DNA surcharge under WIS. STAT. § 973.046. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Ralph Sczygelski further representation of Cornell in this matter.

Upon the foregoing reasons,

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 Ralph Sczygelski is relieved of further representation of Ricky Cornell in this matter.

Diane M. Fremgen
Clerk of Court of Appeals