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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 II

July 15, 2015

To:

Hon. Timothy D. Boyle
Circuit Court Judge
730 Wisconsin Avenue
Racine, WI 53403

Jefren E. Olsen
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Rose Lee
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

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

W. Richard Chiapete
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Jeremy M. Biloff, #336474
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2015AP106-CRNM State of Wisconsin v. Jeremy M. Biloff (L.C. #2013CF438)

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

Jefren E. Olsen, counsel for Jeremy M. Biloff, 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 Biloff's conviction for second-degree sexual assault of a child. Biloff has not exercised his right to file a response. Upon consideration of the no-merit report and an independent review of the record, we conclude that any further proceedings on Biloff's behalf would be frivolous and without arguable merit within the meaning of ***Anders*** and

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

RULE 809.32(1). We accept the no-merit report and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Biloff was charged with one count of repeated sexual assault of the same child and three counts of child enticement. Each count also alleged that Biloff was a persistent repeater because of his 2006 conviction for second-degree sexual assault of a different child. The penalty enhancer carried with it a mandatory life sentence without the possibility of parole. Pursuant to a plea agreement, Biloff entered a no-contest plea to an amended charge of second-degree sexual assault without the persistent-repeater enhancer. The child-enticement charges were dismissed and read in. The court sentenced Biloff to twenty-five years imprisonment, comprising fifteen years' confinement plus ten years' extended supervision. This no-merit appeal followed.

The no-merit report examines two possible issues, the validity of Biloff's no-contest plea and the propriety of the sentence. We agree with counsel's analysis and conclusion that a postconviction or appellate challenge to either would be frivolous and without merit.

Under the United States Constitution, a guilty or no contest plea must be affirmatively shown to be knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶25, 293 Wis. 2d 594, 716 N.W.2d 906. The legislature established in WIS. STAT. § 971.08 certain requirements for ensuring that a plea is knowing, voluntary, and intelligent. Our supreme court has provided additional requirements in ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), and subsequent cases. ***Brown***, 293 Wis. 2d 594, ¶23.

Here, the court addressed Biloff personally and engaged him in a colloquy that verified his understanding and that the pleas were knowing, voluntary, and intelligent. *See* ***id.***, ¶35. Besides the thorough colloquy, the court properly looked to the plea questionnaire/waiver of

rights form Biloff signed reflecting his understanding of the elements, the potential penalties, and the rights he agreed to waive. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. Biloff would be unable to make a prima facie case that the court did not comply with the procedural requirements of WIS. STAT. § 971.08 and that he did not understand or know the information that should have been provided. *See* ***Bangert***, 131 Wis. 2d at 274.

The report next examines whether the sentence imposed is illegal, represents an erroneous exercise of discretion, was otherwise based on improper factors, or is too harsh or excessive.

Biloff's twenty-five-year sentence was legal, as its length and structure comported with legislative dictates. *See* WIS. STAT. §§ 948.02(2) (second-degree sexual assault of a child is a Class C felony), 939.50(3)(c) (reciting penalty for Class C felony), and 973.01(2)(b)3., (d)(intro.) and 2. (prescribing structure of bifurcated sentence).

Also, there would be no arguable basis to assert that the circuit court erroneously exercised its sentencing 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—the gravity of the offense, the character of the offender, and the need to protect the public, ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999), as well as aggravating and mitigating factors, *see* ***Gallion***, 270 Wis. 2d 535, ¶40 n.10.

The record reveals that the court set forth a "rational and explainable basis" for its decision. *See* ***id.***, ¶76 (citation omitted). It placed particular weight on the seriousness of the offense and the need to protect the public, given that he had a prior similar offense and had been through sex offender treatment. The weight to be given each of the factors is a determination particularly within the court's discretion. ***Ocanas***, 70 Wis. 2d at 185. Considering the nature of the crime, the sentence, well under the forty years he faced, is not "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." ***Id.*** Our independent review of the record disclosed no additional potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Jefren E. Olsen is relieved of any further representation of Jeremy M. Biloff in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals