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DISTRICT I

August 17, 2015

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Jalon Matice Thomas
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You are hereby notified that the Court has entered the following order:

2014AP2839-CRNM State of Wisconsin v. Jalon Matice Thomas (L.C. #2012CF984)

Before Kessler, J.[1]

Jalon Matice Thomas appeals from a judgment of conviction, entered upon his guilty pleas, on three counts of fourth-degree sexual assault. Appellate counsel, Colleen Marion, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

RULE 809.32. Thomas 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 report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

Thomas was originally charged with one count of repeated sexual assault of a child and one count of second-degree sexual assault of a child who had not yet attained the age of sixteen. According to the criminal complaint, he had fondled K.A.T., the daughter of his brother's girlfriend, on numerous occasions, touching her buttocks or vaginal area over her clothes. One night, K.A.T. was being watched by Thomas's girlfriend at the girlfriend's house, because K.A.T.'s mother and others had gone out for someone's birthday. Thomas entered the house around 3 a.m., while K.A.T. was up getting a drink of water. K.A.T. returned to the couch on which she was sleeping, followed by Thomas, who pulled down her pants and inserted his finger into her vagina, then licked her vagina before inserting his penis. Later that day, when K.A.T. and Thomas were alone in the house together, he again licked her vagina before inserting his penis.

Trial began on the original charges. The trial adjourned for lunch during K.A.T.'s cross-examination. She went to lunch with two teenage girls, who were also State's witnesses, and all three girls' parents. Despite reminders from the State about a sequestration order, the three girls went to the bathroom together, where K.A.T. attempted to influence the other girls' testimony. The circuit court thus declared a mistrial.

Subsequently, Thomas agreed to resolve his case with a plea agreement. In exchange for guilty pleas, the State agreed to amend the repeated-sexual-assault charge, a Class B felony, to

three counts of fourth-degree sexual assault, a Class A misdemeanor. *See* WIS. STAT. § 940.225(3m). Those charges became counts one, three, and four. The second-degree sexual assault charge, count two, was dismissed. The circuit court conducted a plea colloquy, accepted the charging amendments, and dismissed count two. On count one, the circuit court imposed 217 days' imprisonment, amounting to a time-served disposition. On counts three and four, the circuit court imposed and stayed consecutive nine-month jail sentences in favor of three years' probation on each count.[2] The circuit court also required Thomas to register as a sex offender.

Counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Thomas's guilty pleas and whether the circuit court appropriately exercised its sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

There is no arguable basis for challenging whether Thomas's pleas were knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Thomas completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses. The form correctly acknowledged the maximum penalties Thomas faced and the form, along with an addendum, also specified the constitutional rights he was waiving with his plea. *See* ***Bangert***, 131 Wis. 2d at 262.

The circuit court also conducted a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. One

[2] On count four, the circuit court originally included a provision for no good-time jail credit; that condition was removed on Thomas's postconviction motion.

requirement for the colloquy is that the circuit court ensures the defendant understands the nature of the crime to which he is pleading. *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Fourth-degree sexual assault is committed by one who has sexual contact with another person without consent. *See* WIS JI—CRIMINAL 1219. The circuit court confirmed Thomas understood that "sexual contact" requires intentional touching, *see* ***id.***, but did not discuss that "sexual contact" also has an intent element, *see* ***id.***; *see also* ***State v. Jipson***, 2003 WI App 222, ¶9, 267 Wis. 2d 467, 671 N.W.2d 18. However, counsel included WIS JI—CRIMINAL 1219 with the plea colloquy; that instruction explains the intent element. During the colloquy, Thomas confirmed he had reviewed the instruction with counsel, and counsel verified that he read the instruction to Thomas and that he believed Thomas understood the instruction.

The plea questionnaire and waiver of rights form and addendum, the jury instruction counsel discussed with Thomas, and the circuit court's colloquy appropriately advised Thomas of the elements of his offenses and the potential penalties he faced, and otherwise complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that a plea is knowing, intelligent, and voluntary.[3] There is no arguable merit to a challenge to the plea's validity.

[3] Appellate counsel indicated that the circuit court did not provide a valid deportation warning, but does not explain why it is insufficient. *See* ***State v. Mursal***, 2013 WI App 125, ¶¶15-16, 351 Wis. 2d 180, 839 N.W.2d 173 (deportation warning required by WIS. STAT. § 971.08(1)(c) need not be given verbatim for colloquy to be valid; substantial compliance will suffice). In any event, a bond modification motion filed by Thomas asserts he was born in Milwaukee, so even if the circuit court gave an invalid warning, Thomas would not have an arguably meritorious basis for plea withdrawal on that ground because he would not be subject to any adverse immigration consequences. *See* ***State v. Negrete***, 2012 WI 92, ¶¶26-27, 343 Wis. 2d 1, 879 N.W.2d 749.

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.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 circuit 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, despite the charges on which Thomas was ultimately convicted, this case involved "much more aggravated behavior," including grooming of the victim and sexual intercourse. The circuit court observed that Thomas had a moderate record, but it gave him credit for cooperating with the monitoring program while he was released on bond and for taking responsibility for his behavior by entering a plea. The circuit court observed that Thomas had some treatment needs and should be kept away from young girls. Though it imposed and stayed jail time, the circuit court noted that if Thomas messed up on probation, he would be in jail to serve maximum sentences. The circuit court also thought its sentence was important for sending a message that it is not okay for men in their twenties or thirties to have sex with young teen girls.

Thomas's total sentence is within the range authorized by law,[4] *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). In addition, the decision whether to require registration as a sex offender was discretionary in this case. *See* WIS. STAT. § 973.048(1m); ***State v. Martel***, 2003 WI 70, ¶16, 2624 Wis. 2d 483, 664 N.W.2d 69. Based on the sentencing transcript, we are satisfied that the circuit court properly exercised its discretion in requiring registration. *See* WIS. STAT. § 973.048(3) (listing factors for sentencing court to consider). 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 Colleen Marion is relieved of further representation of Thomas in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[4] *See* WIS. STAT. §§ 973.09(2)(a)1.c. (maximum term of probation for violation of WIS. STAT. § 940.225(3m) is two years) & 973.09(2)(a)2. (allowing one-year increase in maximum probationary term based on number of simultaneous misdemeanor convictions).