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November 25, 2015

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

2014AP2038-CRNM State of Wisconsin v. Terry Dean Carpenter (L.C. #2012CF171)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Terry Carpenter appeals a judgment convicting him of repeated sexual assault of the same child, based upon a no contest plea. Attorney Steven Phillips has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of Carpenter's plea and sentence. Carpenter was sent a copy of the

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

report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Carpenter entered a no contest plea to a single count of repeated sexual assault of the same child pursuant to a negotiated plea agreement that was stated on the record in open court. In exchange for Carpenter's plea, the State agreed to file an amended information that reduced six of the twelve charges, including the single count of conviction, from Class B to Class C felonies, to dismiss and read in the other eleven charges, and to make a joint recommendation of sixteen years of imprisonment, with six years of initial confinement and ten years of extended supervision. The plea agreement reduced Carpenter's sentence exposure by 560 years.

The circuit court conducted a thorough plea colloquy, inquiring into Carpenter's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring Carpenter's understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Carpenter understood that the court would not be bound by any

sentencing recommendations. In addition, Carpenter provided the court with a signed plea questionnaire, and he is not now claiming to have misunderstood any of the information explained on that form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts presented to the court at the plea hearing—namely, that Carpenter had engaged in fondling and digital penetration of the victim's vagina several times a week over an extended period of time, and had attempted penile penetration on some occasions—provided a sufficient factual basis for the plea. Carpenter indicated satisfaction with the representation provided by his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Carpenter has not alleged any other facts that would give rise to a manifest injustice. Therefore, Carpenter's plea was valid and operated to waive all nonjurisdictional defects and defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Carpenter's sentence would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Carpenter was afforded an opportunity to comment on the PSI and to address the court, both personally and through counsel. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court noted that it was aggravated by the fact that Carpenter was an authority figure

who had betrayed the victim's trust; by the profound impact the extended abuse was likely to have upon the victim's life, which could include problems with sleeping, relationships, and trust; and by the length of time the abuse had continued, from when the victim was in kindergarten to when she was twelve years old. With respect to Carpenter's character, the court gave him credit for a positive work history, and noted that he had little in the way of criminal history outside of his ongoing sexual abuse of the victim. However, the court was not persuaded that Carpenter understood the impact of his conduct upon the victim, much less that he took responsibility for his conduct or felt remorse for it, since he continued to minimize and excuse his own behavior while blaming the victim. The court also viewed the recantations by two other children of similar sexual abuse allegations as evidence of Carpenter's manipulation. The court identified the primary goals of the sentencing in this case as punishment and protection of the community.

The court concluded that the joint recommendation of the parties was grossly inadequate given the extended length of time during which Carpenter sexually abused the children in his care, and instead sentenced Carpenter to fifteen years of initial confinement and ten years of extended supervision. The court found that Carpenter was not eligible for either the Challenge Incarceration Program or the Substance Abuse Program; imposed standard conditions of supervision, including compliance with the sex offender registration requirements; directed that Carpenter provide a DNA sample and pay the surcharge; and awarded 337 days of sentence credit as stipulated by the parties.

The components of the bifurcated sentence were within the applicable penalty range and the total imprisonment period constituted just under two-thirds of the maximum exposure Carpenter faced. *See* WIS. STAT. §§ 948.025(1)(e) (classifying repeated sexual assault of the same child as a Class C Felony); 973.01(2)(b)3. and (d)2. (providing maximum terms of twenty-

five years of initial confinement and fifteen years of extended supervision for a Class C felony) (2007-08).

There is a presumption that a sentence "'well within the limits of the maximum sentence'" is not unduly harsh, and the sentence imposed here 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.'" *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted). That is particularly true when taking into consideration the amount of additional sentence exposure Carpenter avoided on the read-in offenses.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Steven Phillips is relieved of any further representation of Terry Carpenter in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals