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**DISTRICT IV**

December 14, 2015

To:

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

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2015AP482-CRNM      State of Wisconsin v. Brandon A. Finch (L.C. # 2014CF280)

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

Brandon A. Finch pled guilty to four counts of possession of child pornography. *See* WIS. STAT. § 948.12(1m) (2013-14).<sup>1</sup> The court imposed concurrent fourteen-year sentences, each comprised of four years of initial confinement and ten years of extended supervision. Finch's appellate counsel, Attorney Andrew R. Hinkel, has filed a no-merit report under WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Finch was sent a copy of the

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

report, but has not filed a response. Upon consideration of the report and an independent review of the record, we conclude there would be no arguable merit to an appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

We agree with counsel's assessment that there would be no arguable merit to a challenge to the validity of the guilty plea. The circuit court conducted a standard plea colloquy, inquiring into Finch's ability to understand the proceedings and the voluntariness of his decision to plead guilty. The court ascertained that Finch understood the elements of the crime and the constitutional rights being waived by a guilty plea. The court explained the potential penalty and confirmed that Finch knew that it was not bound by the terms of the parties' sentencing recommendations. Finch read and signed a plea questionnaire and told the court that he understood it. Finch's attorney agreed that the facts alleged in the criminal complaint constituted an adequate factual basis for the plea. The record shows that Finch's plea satisfied the requirements set forth in WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis.2d 246, 389 N.W.2d 12 (1986). An appellate challenge to the plea would lack arguable merit.

A challenge to the sentence would also lack arguable merit. This court will uphold a sentence unless the circuit court misused its discretion. *State v. J.E.B.*, 161 Wis.2d 655, 661, 469 N.W.2d 192 (Ct. App. 1991). We presume the circuit court acted reasonably, and the defendant must show that the court relied upon an unreasonable or unjustifiable basis for its sentence. *Id.* Public policy strongly disfavors appellate court interference with the sentencing discretion of the circuit court. *State v. Teynor*, 141 Wis.2d 187, 219, 414 N.W.2d 76 (Ct. App. 1987). In imposing sentence, a circuit court should consider the gravity of the offense, the defendant's character, and the need to protect the public. *State v. Borrell*, 167 Wis.2d 749, 773,

482 N.W.2d 883 (1992). The weight given to each of the sentencing factors is within the court's discretion. *J.E.B.*, 161 Wis. 2d at 662.

The circuit court considered the “pernicious problem” presented by child pornography. The court noted the great number of photographs that Finch had cataloged and characterized the crimes as “very grave.” The court considered Finch's character at length, noting that he had a “very difficult childhood” and “appears to be a very troubled young man.” The court acknowledged that Finch had mental health issues but indicated that Finch knew he was “doing ... wrong.” The court considered the interests of the community and the need to protect the public. The court noted that a maximum sentence would not be appropriate because Finch pled guilty, had taken responsibility for his actions, had no prior criminal record, and appeared to want help for his problem. The court's sentence rested upon proper and relevant factors. The court properly exercised sentencing discretion and an appeal on that basis would lack arguable merit.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Andrew R. Hinkel is relieved of any further representation of Finch in this matter pursuant to WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*