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DISTRICT II

February 17, 2016

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

2015AP1391-CRNM State of Wisconsin v. Eric N. Anderson (L.C. #2014CF13)

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

Eric N. Anderson pled no contest to one count of second-degree sexual assault of a child and now appeals from the judgment of conviction. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Anderson was advised of his right to file a response but has not done so. After reviewing the no-merit report and the record, we conclude there are no issues with arguable merit for appeal and therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

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

Anderson had sex with his fiancée in front of her cognitively limited younger sister, then had sex with the sister as the fiancée watched. He pled no-contest to one count of second-degree sexual assault of a child; one count of causing a child to view sexual activity was dismissed and read in. The circuit court sentenced Anderson to four years' initial confinement and six years' extended supervision. This no-merit appeal followed.

The no-merit report first addresses whether Anderson's no-contest plea was knowingly, intelligently, and voluntarily entered. Our review of the record confirms that the circuit court engaged in a thorough colloquy with Anderson that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, signed plea questionnaire and waiver-of-rights forms were entered into the record. We agree with counsel that Anderson would not have a basis to withdraw his plea because of a manifest injustice. *See* ***State v. Rock***, 92 Wis. 2d 554, 558-59, 285 N.W.2d 739 (1979). Any challenge to the entry of Anderson's no-contest plea would lack arguable merit.

The report also examines whether Anderson could argue that the circuit court did not properly exercise its discretion at sentencing. The record reveals that the circuit court's decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing an aggregate ten-year sentence, the court considered the seriousness of the offense, Anderson's character, and the need to protect the public. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court recognized his good employment history and lack of any prior convictions but found the ten-year age gap between Anderson and the victim, his manipulation of the fiancée and her sister, the victim's vulnerability, and his apparent lack of remorse particularly aggravating.

Anderson could have received a forty-year sentence and up to a $100,000 fine. The sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to the sentencing decision would lack arguable merit. Our review of the record discloses no other potential issues for appeal.

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 Sara Kelton Brelie is relieved of further representing Anderson in this matter.

Diane M. Fremgen
Clerk of Court of Appeals