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DISTRICT II

March 9, 2016

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

2015AP2567-CRNM State of Wisconsin v. Jake R. Quinn (L.C. #2011CF907)

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

Jake R. Quinn appeals a judgment convicting him of third-degree sexual assault as a repeat offender.[1] Quinn's appellate counsel, Dustin C. Haskell, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[2] and ***Anders v. California***, 386 U.S. 738 (1967). Quinn was advised of his right to file a response but has not done so. Upon consideration of the

[1] While in jail on this case, two others were filed against Quinn alleging violations of jail rules. They were resolved at the plea hearing in this matter. He does not appeal those judgments of conviction.

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

no-merit report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we conclude that the judgment may be summarily affirmed, as there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Quinn was charged with two counts of second-degree sexual assault of a child involving two separate victims. The incidents occurred in 2009 and 2011. Each count carried a repeater enhancer. Pursuant to a plea agreement, Quinn pled no contest to one count of third-degree sexual assault as a repeater. *See* WIS. STAT. §§ 940.225(3) and 939.62. At the 2014 sentencing, the court ordered five years' confinement, five years' extended supervision, and lifetime sex offender registration. *See* WIS. STAT. § 973.048(4). The judgment of conviction reflects a $250 DNA analysis surcharge. This no-merit appeal followed.

The no-merit report first considers whether Quinn arguably could withdraw his no-contest plea because it was not knowingly, intelligently, and voluntarily entered. Our review of the record confirms that the circuit court engaged in a thorough colloquy with Quinn 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. Quinn indicated he understood each point. In addition, signed plea questionnaire and waiver-of-rights forms were entered into the record. *See* ***State v. Hoppe***, 2009 WI 41, ¶31, 317 Wis. 2d 161, 765 N.W.2d 794. The record also reveals no other basis for a claim that plea withdrawal is necessary to avert a manifest injustice. *See* ***State v. Rock***, 92 Wis. 2d 554, 558-59, 285 N.W.2d 739 (1979). We agree with counsel that a postconviction challenge to the plea would lack arguable merit.

The no-merit report also considers whether a non-frivolous challenge could be raised to the circuit court's exercise of sentencing discretion. We agree that there would be no arguable

basis for asserting that the court erroneously exercised its discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶17, 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).

The court considered the principal objectives of sentencing and the primary sentencing factors. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In fashioning its sentence, the court mainly focused on Quinn's character and the seriousness of the offense. The court acknowledged that Quinn was raised in an environment of violence and ongoing sexual molestation and learned how to treat others by "a really good teacher," his "violent and criminal" father. It also observed that the many efforts made to address his resultant anger and violence, including sexual violence, were not successful, and he now was inflicting similar damage on others, making him a danger to the community. The court also noted that a third victim had come forward. In assessing a defendant's character at sentencing, the court may consider uncharged and unproved offenses. ***State v. Leitner***, 2002 WI 77, ¶45, 253 Wis. 2d 449, 646 N.W.2d 341. Finally, the court emphasized that the victims had not yet recovered, years after their assaults. The court's decision had a "rational and explainable basis." ***Gallion***, 270 Wis. 2d 535, ¶76 (citation omitted).

To challenge the sentence as being unduly harsh likewise would be frivolous. The plea agreement significantly reduced Quinn's exposure to, with the enhancer, twelve years' imprisonment and a fine of up to $25,000. The court imposed a ten-year sentence. The DNA surcharge was mandatory for third-degree sexual assault, WIS. STAT. § 973.046(1r) (2011-12), and it was within the court's authority to order lifetime sex offender registration, WIS. STAT. § 973.048(4). The sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas***, 70 Wis. 2d at 185.

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 Dustin C. Haskell is relieved of further representing Quinn in this matter.

Diane M. Fremgen
Clerk of Court of Appeals