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DISTRICT II

June 29, 2016

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

2015AP2545-CRNM State of Wisconsin v. Sean L. Grendel, Sr. (L.C. #2014CF134)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Michelle L. Velasquez, counsel for Sean L. Grendel, Sr., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967), concluding that no grounds exist to challenge the judgment convicting Grendel of physical abuse of a child—recklessly causing great bodily harm. Grendel has filed a response. Upon consideration of the no-merit report, the response, and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we accept the no-merit report, as we conclude that there

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

is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Grendel's four-year-old daughter sustained a skull fracture and cranial bleed after he threw her to the floor because she was "crabby" and would not give him a good-night kiss. He pled guilty to the child abuse charge and was sentenced to six years' initial confinement plus five years' extended supervision. This no-merit appeal followed.

The no-merit report first considers whether there exists any issue of arguable merit germane to the plea taking. Our review of the record satisfies us that the colloquy and procedures were appropriate in every regard.

A defendant seeking to withdraw a guilty plea after sentencing bears "the heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice." ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). The circuit court ensured that Grendel's plea was knowingly, voluntarily, and intelligently entered by ascertaining that he understood the essential elements of the charge to which he was pleading, the potential punishment for the charge, and the constitutional rights being given up. *See* WIS. STAT. § 971.08; *see also* ***State v. Bangert***, 131 Wis. 2d 246, 260-262, 389 N.W.2d 12 (1986). Grendel has not alleged that the circuit court did not comply with the procedural requirements of § 971.08 or that he did not understand or know any information that should have been provided. *See* ***Bangert***, 131 Wis. 2d at 274.

Besides the thorough colloquy, the court properly looked to Grendel's signed plea questionnaire/waiver of rights form. Grendel expressed his understanding of the elements of the crime, which were spelled out on a separate sheet attached to the plea questionnaire, the potential

penalties, and the rights he agreed to waive, and orally reiterated that understanding under questioning by the court. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. He indicated no hesitation, confusion, or lack of clarity, agreed that a factual basis supported the plea, and confirmed his understanding that the court was not bound by any sentencing recommendation. *See* ***State v. Hampton***, 2004 WI 107, ¶¶20, 23, 274 Wis. 2d 379, 683 N.W.2d 14. No issue of arguable merit could arise from this point.

The no-merit report also considers whether the circuit court properly exercised its discretion at sentencing. The court "must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409.

No basis exists to disturb the sentence imposed. The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough and rational explanation for imposing the sentence it did. The court took into account Grendel's remorse, employment and education history, and pro-social characteristics, and agreed not to factor in controlled substance convictions that Grendel disputed. It also considered the need to treat his alcohol and drug problems, his criminal history, and the seriousness of the child's injury, and explained why it deemed probation an unfitting remedy. The court gave a rational and explainable basis for the sentence. ***State v. Gallion***, 2004 WI 42, ¶39, 270 Wis. 2d 535, 678 N.W.2d 197.

Grendel's response indicates that he believes his eleven-year sentence is unduly harsh, as he was under the influence of alcohol and pain medication, has made rehabilitative strides since being incarcerated, and is sincerely contrite. Presumptively the sentence is not overly harsh, as it

is well within the limits of the fifteen years and/or $50,000 fine that he faced. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

The sentence also actually is not too harsh because its length is not so excessive and unusual and so disproportionate to the offense he committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The treating physician observed that the force used against the little girl was inconsistent with normal discipline and could have caused "neurological collapse." We cannot say that there was an "unreasonable or unjustifiable basis in the record for the sentence imposed." ***State v. Echols***, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

Our independent review reveals no other meritorious issues.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Michelle L. Velasquez is relieved of any further representation of Sean L. Grendel, Sr., on this appeal.

Diane M. Fremgen
Clerk of Court of Appeals