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July 12, 2016

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

2014AP2396-CRNM State v. Tyrone L. Guider (L. C. No. 2013CF4540)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Tyrone Guider filed a no-merit report concluding there is no arguable basis to challenge Guider's conviction for first-degree sexual assault of a child under thirteen. Guider responded. We independently reviewed the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), and noticed a potential issue concerning whether Guider could show his plea was likely to result in his "deportation, exclusion from admission to this country or denial of naturalization." We ordered a supplemental no-merit report. Because no issues of arguable merit appear, we now summarily affirm the judgment of conviction.

Guider was charged with one count of first-degree sexual assault of a child (sexual intercourse), stemming from allegations that he forced oral sex upon his six-year-old stepdaughter. The matter proceeded to a jury trial. After a jury was selected and the attorneys made their opening statements, the State played a video recording of the victim's interview at Children's Hospital. When the case was called the next morning for a continuation of the trial, the parties informed the court that Guider had agreed to enter a guilty plea to first-degree sexual assault of a child (sexual contact), under which Guider would no longer be subject to a minimum mandatory twenty-five-year confinement term. The circuit court imposed ten years' initial confinement and fifteen years' extended supervision.

Our independent review of the record discloses no manifest injustice upon which Guider could withdraw his plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court conducted a thorough plea colloquy, and Guider signed a plea questionnaire and waiver of rights form, with addendum. Guider stated at the plea hearing that he went through the forms with his attorney and that he understood everything on the forms. Guider also stated his answers were truthful. The court's colloquy, buttressed by the plea questionnaire, informed Guider of the constitutional rights he waived by pleading guilty, the elements of the offense and the potential penalties. The court specifically advised Guider it was not bound by the parties' agreement and could impose the maximum penalties. An adequate factual basis supported the conviction.

As we noted in our prior order, the circuit court failed to personally advise Guider of the deportation consequences of his plea. *See* WIS. STAT. § 971.08(2)¹; *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. However, the supplemental no-merit report states “Mr. Guider confirmed with counsel that he is and always has been a citizen of the United States and is not facing deportation as a result of this conviction.” Accordingly, no issue of arguable merit arises from the court’s deficiency in that regard. The record shows the plea was knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986).

In his response to the no-merit report, Guider insists upon his innocence and challenges the evidence of his guilt. However, Guider fails to appreciate that his valid guilty plea waived all nonjurisdictional defenses and defects. *See id.* Moreover, Guider stated under oath in open court that he was pleading guilty because he was guilty. Guider represented to the circuit court that he had no questions about the proceedings. Guider pled guilty on the morning following the jury’s viewing of a video recording of a detailed interview with the child victim at Children’s Hospital concerning the sexual assault. The circuit court asked Guider during the plea colloquy, “And you saw the video yesterday. Are those facts true?” Guider answered, “Yes.” Guider is bound by his guilty plea.

The record also discloses no basis for challenging the court’s sentencing discretion. The court considered Guider’s character, the seriousness of the offense, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court

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

considered positive aspects of Guider's character, but also emphasized Guider's extensive criminal history, including eight prior convictions, and the particularly aggravating nature of the present offense. The sentence was far less than the maximum authorized by law, and therefore presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

There is also no arguable issue concerning the circuit court's denial of Guider's motion to modify his sentence. The court's sentence was not based upon insufficient or inaccurate information. *See State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1; *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). Nothing in Guider's motion persuaded the circuit court that a modification or resentencing was warranted, and our review of the record discloses no issue of arguable merit in this regard.

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Michael Backes is relieved of further representing Guider in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals