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DISTRICT III

September 7, 2016

To:

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

2016AP995-CRNM State of Wisconsin v. Matthew C. Burks (L. C. No. 2014CF905)

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

Counsel for Matthew Burks filed a no-merit report concluding there is no arguable basis for Burks to withdraw his no-contest pleas or challenge the sentences imposed for attempted child enticement and possession of methamphetamine. Burks was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged Burks with use of a computer to facilitate a sex crime, possession of methamphetamine, and possession of drug paraphernalia. According to the complaint, Burks arranged to meet for sex with someone he thought was a fifteen-year-old girl. When he was

arrested at the proposed meeting place, a search of his vehicle uncovered methamphetamine and drug paraphernalia. Pursuant to a plea agreement, Burks entered no-contest pleas to attempted child enticement and possession of methamphetamine. The drug paraphernalia charge was dismissed and read in for sentencing purposes. The agreement allowed the State to recommend a prison sentence only if the presentence investigation report (PSI) recommended prison. The PSI recommended a prison sentence, and the State recommended six years' initial confinement followed by eight years' extended supervision. The circuit court imposed concurrent sentences totaling five years' initial confinement and five years' extended supervision.

The record discloses no arguable manifest injustice upon which Burks could withdraw his no-contest pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, aided by a Plea Questionnaire/Waiver of Rights form, informed Burks of the elements of the offenses, the potential penalties, and the constitutional rights he waived by pleading no contest. The court explained that the penalty for attempted enticement was the same as the penalty for enticement under WIS. STAT. § 948.07.¹ As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Burks it was not bound by the parties' sentence recommendations. The court also gave the deportation warning required by WIS. STAT. § 971.08(1)(c). The record shows the no-contest pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of valid no-contest pleas constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

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

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed consecutive sentences totaling twenty-eight and one-half years' imprisonment and fines totaling \$110,000. The court appropriately considered the seriousness of the offenses and Burks' character, including his prior convictions, absconding from community supervision, and revocation of probation. The court also addressed the need to protect the public because Burks "has many rehabilitative needs, and until these needs are met he will continue to make poor and high risk criminal choices." See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors, and the sentences are not arguably so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Angela Henderson is relieved of her obligation to further represent Burks in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals