OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

September 13, 2016

To:

Hon. Kelly J. Thimm
Circuit Court Judge
Br. 1
1313 Belknap Street
Superior, WI 54880

Michele Wick
Clerk of Circuit Court
Douglas County Courthouse
1313 Belknap Street, Ste. 309
Superior, WI 54880

Daniel W. Blank
Douglas County District Atty.
Room 202
1313 Belknap Street
Superior, WI 54880-2769

Ellen J. Krahn
Assistant State Public Defender
P. O. Box 7862
Madison, WI 53707

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Daniel William Androsky 617877
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2015AP14-CRNM State of Wisconsin v. Daniel William Androsky
(L. C. No. 2013CF91)

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

Counsel for Daniel Androsky has filed a no-merit report concluding there is no basis to challenge Androsky's conviction for child enticement─sexual contact. Androsky has 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 merit to any issue that could be raised on appeal and summarily affirm.

This matter stems from charges that Androsky had sexual intercourse with a twelve-year-old girl. He also sent the victim a photograph of his genitals via text message, and the victim informed police they had been texting a lot since she was age ten. A forensic examination of the victim's phone revealed a series of sexually explicit messages incoming from Androsky's phone.

Androsky was charged with first-degree child sexual assault—contact with a child under age thirteen. A plea agreement was reached that called for the State to amend the charge to child enticement, and the State would be bound by the sentencing recommendation made in the presentence investigation report, with the defense free to argue at sentencing. The circuit court imposed a sentence consisting of five years' initial confinement and ten years' extended supervision.

There is no manifest injustice upon which Androsky may withdraw his plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's colloquy, together with the plea questionnaire and waiver of rights form, informed Androsky of the elements of the offense, the potential penalty, and the constitutional rights he waived by pleading. Androsky argues in his response to the no-merit report that "[u]nder my original Plea Agreement, I was suppose[d] to get Extended Supervision and $100 fine." However, the circuit court specifically informed Androsky, "You and your attorney are free to argue whatever you feel is appropriate, but I'm not going to be bound by anybody's recommendation. I could sentence you from, there's no minimum, up to the maximum penalty." Thus, the court advised Androsky personally that it was not bound by the parties' agreement, and Androsky stated in open court that he understood, satisfying the requirements of ***State v. Hampton***, 2004 WI 107, ¶¶2, 38-42, 274 Wis. 2d 379, 683 N.W.2d 14.

The circuit court also advised Androsky that his plea could have immigration consequences. To the extent the court failed to recite the language of WIS. STAT. § 971.08[1] verbatim, Androsky was not prejudiced as the record reveals he was born in Wisconsin and cannot show his plea is likely to result in deportation. *See* ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. Defense counsel also confirmed Androsky was stipulating that a proper factual basis supported the conviction. 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). Entry of a valid guilty or no contest plea constitutes a waiver of nonjurisdictional defects and defenses. ***Id.*** at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. The court considered the proper factors, including Androsky'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 noted Androsky pled guilty to the child enticement charge, but "he's done little else to accept responsibility." The court specifically rejected Androsky's attempt to claim he believed the victim was age eighteen as "just so far from reality …." The court stated, "Androsky's behavior can only be characterized as disgusting and predatory." The court's sentence was authorized by law and neither unduly harsh nor excessive. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Androsky also argues in response to the no-merit report, "I was only given 12 days jail credit, when I should have been given 24 days jail credit." The record belies this claim.

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

Our independent review of the record discloses no other issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that attorney Ellen Krahn is relieved of further representing Androsky in this matter.

Diane M. Fremgen
Clerk of Court of Appeals