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DISTRICT III

November 8, 2016

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

2015AP1837-CRNM State v. Alexsander C. Mirkovich (L. C. No. 2014CF596)

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

Counsel for Alexsander Mirkovich has filed a no-merit report concluding there is no basis to challenge Mirkovich's convictions for aggravated battery and fourth-degree sexual assault as party to a crime. Mirkovich was advised of his right to respond 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 merit to any issue that could be raised on appeal and summarily affirm. WIS. STAT. RULE 809.21.¹

According to the criminal complaint, the victim was a minor who had passed out in a vacant apartment after consuming alcohol with Mirkovich and Anthony Gomez. The victim stated that when he regained consciousness, Gomez was performing oral sex on him. The victim also indicated Mirkovich was standing nearby without any pants or underwear, and it appeared Mirkovich's mouth was wet. The victim pushed Gomez off, but Mirkovich jumped on the victim and began beating the victim in the face. The victim attempted to protect himself, but Gomez then held him down while Mirkovich continued to beat the victim on his head and upper extremities, causing a broken nose and other injuries to his head, chest and sides. As a result, Mirkovich was charged with first-degree sexual assault, as party to a crime, and substantial battery.

Mirkovich agreed to plead no contest to amended charges of fourth-degree sexual assault, as party to a crime, and aggravated battery. In exchange, the State agreed to recommend a withheld sentence with three years' probation, and no more than one year jail as a condition. The State also agreed not to take a position on whether Mirkovich would be placed on the sex offender registry for this offense. The circuit court imposed a sentence of 220 days' jail on the sexual assault count, without sex offender registry; and eighteen months' initial confinement and three years' extended supervision on the battery count, consecutively.

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

There is no manifest injustice upon which Mirkovich could withdraw his no-contest pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's exemplary plea colloquy, together with the plea questionnaire and waiver of rights form, with attachments, informed Mirkovich of the constitutional rights he waived by pleading no contest, the elements of the offenses, and the potential punishment. The court specifically advised Mirkovich of the potential deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). The court also advised Mirkovich it was not bound by the parties' agreement and could impose the maximum penalties. Mirkovich conceded a sufficient factual basis supported the convictions. The record shows the pleas were knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defenses and defects. *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 Mirkovich's character, the seriousness of the offenses, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court emphasized the manipulative, extremely violent behavior toward the underage victim. The sentence imposed was far less than the maximum allowable and was therefore presumptively neither overly harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

We note the circuit court referenced the COMPAS risk assessment at sentencing. However, the record discloses it was not "determinative" of the sentence imposed. *See State v.*

Loomis, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Accordingly, any challenge to the sentence based on the court's COMPAS reference would lack arguable merit.

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

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

IT IS FURTHER ORDERED that attorney Jeffrey Mann is relieved of further representing Mirkovich in this matter.

Diane M. Fremgen
Clerk of Court of Appeals