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DISTRICT II

January 18, 2017

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

2015AP1492-CRNM State of Wisconsin v. Michael J. Bishop (L.C. # 2014CF31)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Michael J. Bishop appeals from a judgment of conviction entered upon his no contest pleas to first-degree sexual assault, contact with a child under thirteen, contrary to WIS. STAT. § 948.02(1)(e) (2013-14), and sexual exploitation of a child, contrary to WIS. STAT. § 948.05(1)(b). Bishop's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE

809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Bishop received a copy of the report, was advised of his right to file a response, and elected not to do so. Upon our independent review of the record, we determined there were potential issues of arguable merit concerning Bishop's no contest pleas. As to Bishop's no contest plea to the child exploitation charge, we questioned whether the plea-taking procedure comported with ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), because no record was made of Bishop's understanding that the charge carried a mandatory minimum penalty. As to both no contest pleas, we questioned whether the circuit court's failure to advise Bishop that he faced multiple mandatory DNA surcharges gave rise to an arguably meritorious plea withdrawal issue. We required appellate counsel to consult with Bishop and file supplemental no-merit reports.[2]

Pursuant to our August 22, 2016 order, counsel filed a supplemental no-merit report asserting that after consultation, Bishop "wishes to waive any challenge to his plea on the grounds that he did not know about the mandatory minimum." We also received a written statement from Bishop confirming his desire to waive any potential challenge to the mandatory minimum penalty plea-taking issue. Similarly, pursuant to our November 11, 2016 order, counsel filed a second supplemental no-merit report asserting that after consultation, Bishop

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] On August 22, 2016, we directed counsel to file a supplemental no-merit report on the mandatory minimum penalty issue. After counsel filed the supplemental no-merit report, we certified ***State v. Odom***, No. 2015AP2525-CR, to the Wisconsin Supreme Court for its review and determination on whether a circuit court's failure to advise a defendant about the mandatory imposition of multiple DNA surcharges for multiple convictions "establishes a prima facie showing that the defendant's plea was unknowing, involuntary, and unintelligent." Due to the ***Odom*** certification, on November 11, 2016, we directed appellate counsel to file a second supplemental no-merit report addressing whether the imposition of multiple mandatory DNA surcharges gives rise to an issue of arguable merit in the instant case.

"wishes to waive any challenge to his plea on the grounds that he was not advised that the court would be imposing multiple DNA surcharges." As before, we received a written statement from Bishop confirming his desire to waive any potential challenge to the DNA surcharge plea-taking issue. We accept these representations and conclude that Bishop has waived any challenge to the legitimacy of his no contest pleas based on a lack of information or understanding concerning (1) the mandatory minimum penalty associated with the child exploitation charge, and (2) the imposition of multiple DNA surcharges. Upon consideration of the original and supplemental no-merit reports and based on our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any other issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

No issue of arguable merit otherwise arises from the taking of Bishop's no contest pleas.[3] The circuit court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Bishop's signed plea questionnaire to establish his knowledge and understanding of his pleas. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

[3] Bishop was originally charged with two counts of first-degree sexual assault of a child, two counts of incest, and one count each of sexual exploitation of a child, child enticement, and possession of child pornography. Upon Bishop's pleas to the two charges of conviction, the State moved to dismiss and read in the remaining five counts and agreed not to charge Bishop for additional child images found on his electronic device.

At sentencing, the court imposed a twenty-two year bifurcated sentence with twelve years of initial confinement and ten years of extended supervision on the first-degree sexual assault count. On the child exploitation count, the court imposed a consecutive eighteen-year bifurcated sentence, with eight years of initial confinement and ten years of extended supervision. In fashioning the sentence, the court considered the seriousness of the offenses, the defendant's character and history of prior offenses, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Noting that first-degree child sexual assault, a Class B felony, is itself a most serious offense, the sentencing court determined that the crime was made even more severe by Bishop's taking pictures. The court considered that Bishop had a prior sexual assault on his record and a history of being revoked while on probation. The court determined that a lengthy prison sentence was necessary due to the seriousness of the offenses and to protect the victim and the general public. The sentence was a demonstrably proper exercise of discretion. Further, we cannot conclude that the global forty-year sentence when measured against the possible maximum sentence of 100 years is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Bishop further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Tristan S. Breedlove is relieved from further representing Michael J. Bishop. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals