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**DISTRICT III**

March 14, 2017

To:

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

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2016AP848-CRNM      State of Wisconsin v. Russell A. Elk (L. C. No. 2015CF251)

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

Counsel for Russell Elk filed a no-merit report concluding there is no arguable basis for Elk to withdraw his guilty plea or challenge the sentence imposed for child enticement. Elk 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 amended information charged Elk with repeated sexual assault of a child and child enticement. Pursuant to a plea agreement, the State dismissed and read in the sexual assault

charge, and Elk entered a guilty plea to the enticement charge. The circuit court sentenced Elk to ten years' initial confinement and ten years' extended supervision with 320 days of jail credit.

The record discloses no arguable manifest injustice upon which Elk could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form, and the jury instructions, informed Elk of the elements of the offense, the potential penalties, and the constitutional rights he waived by pleading guilty. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Elk it was not bound by the parties' sentence recommendations. Elk stated no promises or threats induced his plea. He acknowledged his conviction would result in loss of his rights to vote and bear firearms, and that he would be placed on the sexual offender's registry. Elk conceded the facts contained in the complaint were true. The complaint alleged Elk took a minor child to hotel rooms and to a bedroom in a neighbor's home for sexual intercourse. Elk also confirmed that, by his guilty plea, he was withdrawing pretrial motions filed by his attorney. The circuit court did not orally give the deportation warning required by *State v. Douangmala*, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1, and WIS. STAT. § 971.08(1)(c) (2015-16). However, the presentence investigation report (PSI) states Elk was born in Chicago. Therefore, he is an American citizen and not subject to deportation. The record shows the guilty plea was knowingly, voluntarily, and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record discloses no arguable basis for challenging the sentencing court's discretion. The parties jointly recommended five years' initial confinement and ten years' extended

supervision, and the PSI suggested four to five years' initial confinement and four to five years' extended supervision. The circuit court found it could not adopt those recommendations, noting Elk's lengthy criminal record and his need for rehabilitation, treatment and punishment. Elk's probation supervision had been revoked on three separate occasions. He conceded to the PSI author that he had been "in trouble with the law for most of his life and has been in jail for most of his convictions." The maximum sentence for child enticement is twenty-five years' imprisonment. The twenty-year sentence imposed by the circuit court is 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 (2015-16).

IT IS FURTHER ORDERED that attorney Ralph Sczygelski is relieved of his obligation to further represent Elk in this matter. WIS. STAT. RULE 809.32(3) (2015-16).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*