



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

May 2, 2017

To:

Hon. Ann Knox-Bauer
Circuit Court Judge
Taylor County Courthouse
224 S 2nd St
Medford, WI 54451

Rose Thums
Clerk of Circuit Court
Taylor County Courthouse
224 S. 2nd Street
Medford, WI 54451

Charlotte Gibson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Megan Sanders-Drazen
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Kristi S. Tlusty
District Attorney
224 S. Second Street
Medford, WI 54451

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Chad P. Hoffstatter
N3497 County Hwy. H
Gilman, WI 54433

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

2016AP1150-CRNM State of Wisconsin v. Chad P. Hoffstatter
(L. C. No. 2015CF110)

Before Hruz, J.¹

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Counsel for Chad Hoffstatter has filed a no-merit report concluding no grounds exist to challenge Hoffstatter's conviction of one count of operating a motor vehicle without the owner's consent (joyriding), contrary to WIS. STAT. § 943.23(3m). Hoffstatter was informed of his right to file a response to the no-merit report and has not responded. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Hoffstatter with one felony count of operating a motor vehicle without the owner's consent, contrary to WIS. STAT. § 943.23(2). Pursuant to a plea agreement, the State amended the charge to joyriding, which is a Class A misdemeanor. In exchange for Hoffstatter's no-contest plea to the amended charge, the State joined in defense counsel's recommendation to withhold sentence and impose one year of probation.² The court imposed a sentence consistent with the joint recommendation.

The record discloses no arguable basis for withdrawing Hoffstatter's no-contest plea. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Hoffstatter completed, informed Hoffstatter of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no-contest plea. When asked whether he wanted to proceed with the plea agreement, Hoffstatter responded: "That's not what I want to do, but that's what I have to do today." Defense counsel explained that Hoffstatter understood and weighed his options, including moving forward with a jury trial,

² Under WIS. STAT. § 973.09(2)(a)1m, the original term of probation for a Class A misdemeanor shall be "not less than 6 months nor more than one year."

but Hoffstatter decided it was more important to pursue the benefit of the plea agreement. Hoffstatter then confirmed he was entering the plea of his “own free will” and that he was the one making the decision to enter a no-contest plea to the amended charge.

The circuit court confirmed that Hoffstatter understood the court was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and advised Hoffstatter of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). Additionally, the court properly found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Hoffstatter committed the crime charged. The record shows the plea was knowingly, voluntarily, and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. *State v. Scherriecks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced Hoffstatter consistent with the joint recommendation. In any event, it cannot reasonably be argued that Hoffstatter’s sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

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

IT IS FURTHER ORDERED that attorney Megan Sanders-Drazen is relieved of further representing Hoffstatter in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals