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. Vincent R. Biskupic
Circuit Court Judge
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Joseph N. Ehmann
First Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Carrie A. Schneider
District Attorney
320 S. Walnut St.
Appleton, WI 54911

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

Steven D. Pillow, Jr. 451905
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2017AP56-CRNM State of Wisconsin v. Steven D. Pillow, Jr. (L. C. No. 2013CF392)

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

Counsel for Steven Pillow, Jr., filed a no-merit report concluding there is no arguable basis for Pillow to withdraw his no-contest plea or challenge the sentence imposed for child enticement. Pillow filed a response alleging Judge Biskupic exhibited bias against him and the fourteen-year sentence is excessive. 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 complaint charged Pillow with repeated sexual assault of a fifteen-year-old girl and child enticement, both as a repeater. According to the complaint, an aid worker called the police

to investigate conditions at the motel room where Pillow lived with his two children. The room was filthy, filled with garbage, moldy food, clothing filling the floor space, and no bedding on either bed. While the aid worker was doing laundry she discovered a tourniquet and Ziploc bag that she believed indicated narcotic use. Fifteen year-old E.J.O., who stayed at the motel with Pillow, initially provided police with a false name and date of birth. Eventually, E.J.O. told an officer she and Pillow had been sexually active with one another for six or seven months. Pillow denied having any type of sexual relationship with E.J.O. When the officer informed Pillow that a sex toy was recovered and would be sent to the crime lab for DNA analysis, Pillow told the officer "if E.J.O.'s DNA was found on the sex toy then she would have used it without him knowing. Pillow then stated that E.J.O. was a 'compulsive masturbator.'"

Pursuant to a plea agreement, Pillow entered a no-contest plea to the enticement charge with the repeater enhancer. The sexual assault count was dismissed and read in for sentencing purposes. The circuit court ordered a presentence investigation report (PSI). Pillow told the PSI author that he had intercourse with E.J.O. within a couple of weeks of meeting her and she lived with him a majority of the time after she was kicked out of her residence and he was evicted from his home. Pillow and E.J.O. both used heroin on a daily basis. Pillow stated he was not aware that E.J.O. was under the age of eighteen. She told him she was nineteen years old and, based on her piercing and tattoos, he thought she was at least eighteen. He also claimed E.J.O.'s mother was aware of their relationship and had said E.J.O. was nineteen years old. He stated E.J.O. told him the truth about her age on the day of his arrest, as police were responding to the motel. They both decided to say he hired her as a babysitter in order to avoid Pillow getting in trouble.

The PSI recommended four to five years' initial confinement and four to five years' extended supervision. The State joined in the PSI's recommendation. The defense recommended probation based on Pillow's belief E.J.O. was nineteen years old, his work history, and his behavior during the two years he was released pending the trial or sentencing.

The sentencing court expressed doubt that Pillow could have lived with the fifteen-year-old victim for eight months without learning she was not nineteen years old. The court specifically considered Pillow's prior record, including violations of probation and a long history of drug offenses. The court considered the read-in offense, Pillow's threatening behavior toward the aid worker, Pillow's initial denial to police of any sexual relationship with E.J.O., his drug use in front of his children, and the conditions of the motel room where they lived. The court imposed a sentence of six years' initial confinement and eight years' extended supervision.

The record discloses no arguable manifest injustice upon which Pillow could withdraw his no-contest plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's lengthy colloquy, supplemented by a Plea Questionnaire/Waiver of Rights form, detailed Pillow's constitutional rights, the elements of the offense, and the potential penalties. As required by ***State v. Hampton***, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Pillow that it was not bound by the parties' sentence recommendations. Although there was some initial confusion about application of the repeater enhancer, the court clarified the maximum sentence before accepting Pillow's no-contest plea. Pillow told the court his plea was not the product of any threats or promises other than the recited plea agreement. The record shows the 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 no-contest plea constitutes a waiver of all nonjurisdictional defects and defenses. ***Id.*** at 392.

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence of seventeen years' initial confinement and ten years' extended supervision and a $100,000 fine. Pillow contested allegations by the victim's father contained in the PSI that he beat the victim and caused her to have a miscarriage, injected her with heroin, and tried to get her to engage in prostitution. The circuit court stated it would not consider any of those allegations when imposing sentence. The court considered no improper factors, and the fourteen-year sentence 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).

In his response to the no-merit report, Pillow contends Judge Biskupic exhibited bias against him and speculates the bias was based on a lawsuit Pillow filed against two Appleton police department officers. That lawsuit was not mentioned during the proceedings, and nothing in the record suggests that the sentencing court considered the lawsuit.

Pillow contends the cash bond imposed following his no-contest plea shows the judge's bias. Setting cash bond after a conviction is not unusual and does not reflect judicial bias.

Pillow bases his argument that the sentence is excessive on the fact that E.J.O. appeared to be nineteen years old. Child enticement is a strict liability offense. A mistaken belief about the victim's age is not a defense. *See* ***State v. Robins***, 2002 WI 65, ¶30, 253 Wis. 2d 298, 646 N.W.2d 287. To the extent Pillow's mistaken belief about E.J.O.'s age might constitute a mitigating circumstance, his professed mistaken belief depends on his credibility, which was damaged by his initial lies to the investigating officer. The circuit court judge determines credibility at sentencing. ***Anderson v. State***, 76 Wis. 2d 361, 369, 251 N.W.2d 768 (1977).

Our independent review of the record discloses no 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 Joseph Ehmann is relieved of his obligation to further represent Pillow in this matter. WIS. STAT. RULE 809.32(3) (2015-16).

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) (2015-16).

Diane M. Fremgen
Clerk of Court of Appeals