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June 14, 2017

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

2016AP560-CRNM State of Wisconsin v. Seth R. White (L.C. #2014CF67)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Seth R. White appeals from a judgment of conviction entered upon his no-contest plea to one count of repeated sexual assault of a child. White's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). White received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of

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

the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

This case arises from conduct occurring between November 2013 and January 2014 involving White's sexual assault of a relative, who was, at the time, fourteen and fifteen years old. White was originally charged with repeated sexual assault of a child in violation of WIS. STAT. § 948.025(1)(e), using a computer to facilitate a child sex crime in violation of WIS. STAT. § 948.075(1r), and exposing a child to harmful materials in violation of WIS. STAT. § 948.11(2)(a).

Pursuant to a plea agreement, White pled no-contest to repeated sexual assault of a child and the other two counts were dismissed and read in. In addition, the State agreed to dismiss and read in two counts of felony bail jumping brought in subsequent case No. 2014CF113. At sentencing, the court imposed a twenty-year bifurcated sentence, with eight years of initial confinement followed by twelve years of extended supervision. This no-merit appeal followed.

The no-merit report addresses the potential issues of whether White's plea was freely, voluntarily, and knowingly entered and if the sentence imposed was illegal or the result of an erroneous exercise of discretion. Our review of the record persuades us that no issue of arguable merit arises from either point.

The trial court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a), (b), and (d),[2] ***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 White's signed plea questionnaire to establish his knowledge and understanding of his plea. *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). No issue of arguable merit arises from the plea-taking procedures in this case.

In fashioning the sentence, the court considered the seriousness of the offense, the defendant's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Though the circuit court identified several mitigating factors, including White's lack of any prior criminal record, in the end it permissibly focused on the aggravated nature of the offense. *See* ***id.*** (the weight to be given to each factor is committed to the circuit court's discretion). The circuit court properly identified punishment as a central objective and determined that probation would unduly depreciate the seriousness of the offense. *See* ***State v. Gallion***, 2004 WI 42, ¶¶41, 44, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court's sentence was a demonstrably proper exercise of discretion with which we will not interfere. ***Id.***, ¶¶17-18. Further, we cannot conclude that the twenty-year sentence when

[2] As acknowledged in appellate counsel's no-merit report, the circuit court did not provide the WIS. STAT. § 971.08(1)(c) deportation warning. However, counsel asserts and the record supports that White cannot show his plea is likely to result in deportation. Therefore, the failure to give the deportation warning provides no grounds for relief. *See* WIS. STAT. § 971.08(2); ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

measured against the possible maximum sentence of forty 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.[3] Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent White in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Suzanne L. Hagopian is relieved from further representing Seth R. White 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 except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals

[3] White's no-contest plea forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.