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**DISTRICT III/II**

July 26, 2017

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

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2015AP2511-CRNM      State of Wisconsin v. Ronald F. Nulph (L.C. # 2014CF140)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Ronald Nulph appeals from a judgment convicting him of repeated sexual assault of the same child contrary to WIS. STAT. § 948.025(1)(e) (2013-14). Nulph's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16) and *Anders v. California*,

386 U.S. 738 (1967). Nulph received a copy of the report and has filed a response. Upon consideration of the report, Nulph's response and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21 (2015-16).

The no-merit report addresses the following possible appellate issues: (1) whether Nulph's guilty plea was knowingly, voluntarily and intelligently entered and had a factual basis; and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his guilty plea, Nulph answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Nulph's guilty plea was knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Nulph signed is competent evidence of a knowing and voluntary plea. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Nulph's guilty plea.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Nulph to a fifteen-year term. In fashioning the sentence, the court considered the seriousness of the offense, which was of long duration and involved a trust relationship between Nulph and the victim, Nulph's character, and the need to protect the victim from Nulph by incarcerating him for a significant period of time. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight of the sentencing factors was within the circuit court's discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20.

Because he was convicted of a crime under WIS. STAT. § 948.025 (2013-14), Nulph was not eligible for the challenge incarceration program or the earned release program. WIS. STAT. § 973.01(3g) and (3m) (2013-14). The felony sentence complied with § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In his response to counsel's no-merit report, Nulph argues that he was sentenced on the basis of inaccurate information. The record does not bear out his claim.

During the plea colloquy, Nulph agreed that the complaint offered a factual basis for his guilty plea even if he disagreed with some of the facts alleged in the complaint. Nulph specifically agreed to the accuracy of those portions of the complaint that alleged he had sexual contact with a child on more than three occasions in 2013. The District Attorney took the opportunity to confirm during the plea hearing that Nulph understood that at sentencing, the

State intended to argue the facts set out in the complaint regardless of whether Nulph disputed any of those facts.

Nulph's guilty plea waived any challenge to the sufficiency of the complaint, including the legality and sufficiency of the evidence. *Rafferty v. State*, 29 Wis.2d 470, 478-79, 138 N.W.2d 741 (1966); *County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984) (guilty plea waives the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights).

Finally, the no-merit report states and the record confirms that Nulph had an opportunity to correct any errors he perceived in the presentence investigation report. However, as the parties reviewed the presentence investigation report at sentencing, the circuit court informed Nulph that even if he disagreed with the allegations in the complaint as discussed in the presentence investigation report, those disagreements were not "errors" for correction by the court. We agree with the court's view under the circumstances of this case.

Nulph has not shown that the circuit court relied upon erroneous information in sentencing him. No issue with arguable merit arises.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Erica Bauer of further representation of Nulph in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2015-16).

IT IS FURTHER ORDERED that Attorney Erica Bauer is relieved of further representation of Ronald Nulph in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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