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DISTRICT III

August 8, 2017

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

2016AP979-CRNM State v. Jeremy J. Husbeck
(L. C. No. 2014CF141)

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

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).

Counsel for Jeremy Husbeck has filed a no-merit report concluding there is no basis to challenge a judgment of conviction for second-degree sexual assault of a child. Husbeck was advised of his right to respond 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 merit to any issue that could be raised on appeal and summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).¹

An Information charged Husbeck with second-degree sexual assault of a child, following allegations of sexual intercourse with a fourteen-year-old girl in Marinette. Husbeck pleaded guilty to the charge, and the State agreed not to make a specific sentencing recommendation although it would be free to present the facts and background of the matter. The circuit court imposed a sentence consisting of ten years' initial confinement and five years' extended supervision.

There is no arguable basis upon which Husbeck could withdraw his plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Husbeck of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential punishment. The court specifically advised Husbeck it was not bound by the parties' agreement and could impose the maximum penalty. The court also advised Husbeck of the potential deportation consequences of a plea, as mandated by WIS. STAT. § 971.08(1)(c). Husbeck conceded there was an ample factual basis to warrant the court's acceptance of the plea. Husbeck's plea was freely, voluntarily, and intelligently given, and there is no basis to challenge the court's acceptance of the plea and the finding of guilt. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

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

The record also discloses no basis for challenging the circuit court’s sentencing discretion. The court considered proper factors, including Husbeck’s character, the seriousness of the offense, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted “a lot of positives” in Husbeck’s life. However, the court also observed Husbeck was thirty-one years old at the time of the offense and the victim was a fourteen-year-old child who attempted suicide after the offense. The court concluded the seriousness of the offense warranted a substantial period of incarceration. The sentence imposed was far less than the maximum forty years’ imprisonment allowable by law and was not overly harsh or excessive.² *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 issues for appeal.

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

IT IS FURTHER ORDERED that attorney Ellen Krahn is relieved of further representing Husbeck in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals

² We note the circuit court referenced the COMPAS risk assessment at sentencing. However, the record shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Accordingly, any challenge to the sentence based on the court’s reference to COMPAS would lack arguable merit.