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

September 26, 2017

To:

Hon. Roderick A. Cameron
Circuit Court Judge
Chippewa County Courthouse
711 N. Bridge Street
Chippewa Falls, WI 54729

Karen Hepfler
Clerk of Circuit Court
Chippewa County Courthouse
711 N. Bridge Street, Ste. 220
Chippewa Falls, WI 54729

Wade C. Newell
District Attorney
711 N. Bridge Street
Chippewa Falls, WI 54729-1845

Melissa M. Petersen
Petersen Law Firm, L.L.C.
P.O. Box 100
Hager City, WI 54014

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

Vincent W. Jensen 536186
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

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

2016AP771-CRNM State v. Vincent W. Jensen
2016AP772-CRNM (L. C. Nos. 2014CF369, 2014CF391)

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 Vincent Jensen has filed a no-merit report concluding no grounds exist to challenge Jensen's convictions for one count of second-degree sexual assault by sexual contact with a child under age sixteen and one count of second-degree sexual assault, contrary to WIS.

STAT. §§ 948.02(2) and 940.225(2)(a) (2015-16), respectively.[1] Jensen was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the records 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. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

In Chippewa County Circuit Court case No. 2014CF369, the State charged Jensen with first-degree sexual assault of a child under age twelve, contrary to WIS. STAT. § 948.02(1)(b). The charge arose from allegations regarding Jensen's contact with ten-year-old H.G., who reported that Jensen placed his mouth on H.G.'s penis in the late winter/early spring of 2013. In Chippewa County Circuit Court case No. 2014CF391, the State charged Jensen with second-degree sexual assault; attempted second-degree sexual assault; and felony bail jumping. Those charges arose from allegations regarding Jensen's contact with seventeen-year-old C.B. in September 2014.

Pursuant to a plea agreement, Jensen pleaded guilty to an amended charge of second-degree sexual assault by sexual contact with a child under age sixteen in case No. 2014CF369, and entered an ***Alford***[2] plea to the second-degree sexual assault charge in case No. 2014CF391. The remaining charges from case No. 2014CF391, as well as six charges arising from four other Chippewa County cases, were dismissed and read in. The State made no sentencing concession under the plea agreement, and both parties remained free to argue at sentencing. Out of a

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

maximum possible eighty-year sentence, the circuit court imposed consecutive sentences resulting in a total of eighteen years' initial confinement followed by twelve years' extended supervision.

The record discloses no arguable basis for challenging the effectiveness of Jensen's trial counsel. To establish ineffective assistance of counsel, Jensen must show that his counsel's performance was not within the range of competence demanded of attorneys in criminal cases and that the deficient performance resulted in prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove prejudice, Jensen must demonstrate "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

The no-merit report addresses whether trial counsel was ineffective by failing to pursue a pretrial motion to suppress evidence; however, nothing in the record would support a non-frivolous suppression motion. Neither complaint narrative references any statements made by Jensen nor evidence discovered by a search. Rather, the allegations arose from statements made by the victims in each case. Therefore, any claim that trial counsel was ineffective by failing to pursue a suppression motion would lack arguable merit. Our review of the record and the no-merit report discloses no basis for challenging trial counsel's performance and no grounds for counsel to request a ***Machner***[3] hearing.

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[2] An ***Alford*** plea is a guilty or no-contest plea in which the defendant either maintains innocence or does not admit to the commission of the crime. ***State ex rel. Jacobus v. State***, 208 Wis. 2d 35, 54, 559 N.W.2d 900 (1997); *see also* ***North Carolina v. Alford***, 400 U.S. 25 (1970).

[3] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

The record discloses no arguable basis for withdrawing either Jensen's guilty or ***Alford*** pleas. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Jensen completed, informed Jensen of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering a guilty plea in one case and an ***Alford*** plea in the other. The circuit court confirmed that any mental health issues Jensen had did not interfere with his ability to understand the proceedings. The court advised Jensen of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c), and found that a sufficient factual basis existed in the record to support the conclusion that Jensen committed second-degree sexual assault by sexual contact with a child under age sixteen—the crime to which he pleaded guilty. With specific respect to Jensen's ***Alford*** plea, there was strong proof of guilt as to each element of the crime, as required for such pleas. *See* ***State v. Smith***, 202 Wis. 2d 21, 27-28, 549 N.W.2d 232 (1996). The State said that C.B. would testify Jensen attempted sexual contact with her while she was sleeping at a residence. When C.B. moved to the garage to get away from Jensen, he followed and ultimately had sexual contact with C.B. without her consent. The record shows the pleas were knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentences imposed. Before imposing sentences authorized by law, the circuit court considered the seriousness of the offenses; Jensen's character, including his lengthy and varied criminal history; the need to protect the public; and the mitigating factors Jensen raised. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Jensen's sentences are so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Further, there is no arguable merit to any claim that the conditions

of extended supervision were not "reasonable and appropriate" under the circumstances of this case. *See* ***State v. Koenig***, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499.

There is likewise no arguable merit to any claim that the sentencing court improperly considered the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk assessment that was submitted with the presentence investigation report. In fact, the sentencing court stated that it would not rely on COMPAS. Thus, COMPAS did not play any role in the court's ultimate determination, in conformity with ***State v. Loomis***, 2016 WI 68, ¶99, 371 Wis. 2d 235, 881 N.W.2d 749.

Our independent review of the records discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Melissa Peterson is relieved of further representing Jensen in these matters. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Clerk of Court of Appeals