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September 27, 2017

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

2017AP681-CRNM State of Wisconsin v. Lee A. Kolkovich (L.C. #2015CF732)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Lee A. Kolkovich appeals from a judgment convicting him of using a computer to facilitate a child sex crime, contrary to WIS. STAT. § 948.075(1r) (2015-16).¹ Kolkovich's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and

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

Anders v. California, 386 U.S. 738 (1967). Kolkovich was advised of his right to file a response but has elected not to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Thirty-three-year-old Kolkovich initiated internet communication via his cell phone with an undercover officer posing as fifteen-year-old “Shelly,” by responding to the profile and picture “Shelly” posted on a social networking site. The picture was of a female officer when she was fifteen. At Kolkovich’s suggestion, the two continued their conversation on another site. “Shelly” told him she was fifteen.

The discussions turned sexual. Eventually, Kolkovich sent three pictures of his exposed penis and the two arranged to meet for sex. “Shelly” told him to bring condoms. In the search of Kolkovich’s vehicle incident to his arrest, police found condoms that Kolkovich admitted stopping to purchase at “Shelly’s” request. He pled guilty and was sentenced to the mandatory minimum five-year term of confinement under WIS. STAT. § 939.617(1), plus three years’ extended supervision. This no-merit appeal followed.

The no-merit report first addresses whether a nonfrivolous argument could be made that Kolkovich’s guilty plea was not knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a thorough colloquy with Kolkovich that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, the plea questionnaire and waiver of rights form Kolkovich signed was entered into the record and confirmed that he fully understood the

consequences of his plea. We agree with counsel that a challenge to the entry of Kolkovich's guilty plea would lack arguable merit.

We also agree with counsel's determination that there exist no potentially meritorious issues for appeal or postconviction motion as to whether the court imposed an illegal sentence or otherwise erred in its exercise of sentencing discretion.

The court had no choice but to impose at least the mandatory minimum five-year term of initial confinement. *See* WIS. STAT. § 939.617(1); *State v. Holcomb*, 2016 WI App 70, ¶8, 371 Wis. 2d 647, 886 N.W.2d 100. Probation was not an option. *See State v. Lalicata*, 2012 WI App 138, ¶11, 345 Wis. 2d 342, 824 N.W.2d 921. It did not impose a fine. Review of the court's exercise of discretion therefore is limited to the extended supervision imposed, three years out of a possible fifteen.

The circuit court considered the gravity of the offense, Kolkovich's character and rehabilitative needs, and the need to protect the public. *See State v. Spears*, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). Specifically, it observed that the seriousness of the offense of preying on children, regardless of the cause or motivation, spurred the legislature to create a system of "serious sentences and consequences." The nature of Kolkovich's actions—pursuing contact, and sending pictures of his exposed penis and trying to meet for sex even after learning "Shelly's" age—left the court unconvinced that he would not have followed through. As to Kolkovich's character and rehabilitation needs, the court noted his strong family support, lack of a prior record, that he is taking rehabilitation seriously, and that some of his conduct could be explained, but not excused, by his own earlier sexual abuse. Protection of the community was warranted because Kolkovich's conduct only escalated after learning "Shelly" was fifteen, and,

even had he aborted this contact as he claimed he ultimately would have, he likely would attempt it again. No arguably meritorious challenge to the sentence could be maintained.

Our review of the record discloses no other potential issues for appeal. Kolkovich's guilty plea waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the plea, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Kolkovich further in this appeal.

Upon the foregoing reasons,

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 Kolkovich in this appeal. *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