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

October 11, 2017

To:

Hon. Michael T. Judge
Circuit Court Judge
Oconto County Courthouse
301 Washington
Oconto, WI 54153

Michael C. Hodkiewicz
Clerk of Circuit Court
Oconto County Courthouse
301 Washington
Oconto, WI 54153-0078

Erica L. Bauer
Bauer & Farris, LLC
Zuelke Bldg., Ste. 410
103 W. College Ave.
Appleton, WI 54911

Edward D. Burke Jr.
District Attorney
301 Washington Street
Oconto, WI 54153

Scott J. Arveson 637010
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

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

2016AP1325-CRNM State of Wisconsin v. Scott J. Arveson
(L. C. No. 2015CF19)

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 Scott Arveson has filed a no-merit report concluding no grounds exist to challenge Arveson's conviction for one count of child enticement—sexual contact, contrary to

WIS. STAT. § 948.07(1) (2015-16).[1] Arveson has filed a response raising various challenges to his conviction, and his counsel filed a supplemental no-merit report addressing Arveson's concerns. 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. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The Complaint against Arveson alleged that on February 13, 2015, Green Bay police officer Jamie Kuhn, working undercover, placed an advertisement on a local Craigslist[2] site in the casual encounters section for women seeking men. The advertisement included no identifying description or information other than indicating the advertiser was "height-weight appropriate." Officer Kuhn received an e-mail from "Scott Arveson" that included a telephone number and stated "well if you are real then text me." Officer Kuhn responded: "I can text. Are you ok if I'm not 18? I don't want you to have my number if ur gonna call the cops on me cuz someone already flagged me." Arveson replied, "I don't care if you are 18" and indicated he was older. During the series of text messages that followed, Arveson asked, "[h]ow old are you" and officer Kuhn replied, "15." Arveson then acknowledged he could go to jail because she was fifteen, and he asked if she was a cop. Officer Kuhn responded: "No. Are you?" After further text messaging, Arveson repeated "[y]ou sound like a cop" and asked for "a pic." Officer Kuhn then texted to Arveson a photo of a law enforcement employee when that employee was fifteen years old. In the text messages that followed, Arveson stated older men were better at sex and

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

[2] Craigslist is a classified advertisements website.

discussed having sex "without a condom." When officer Kuhn responded she did not want to get pregnant, Arveson stated condoms were okay and told her to pick up "the ones you like." Arveson ultimately asked "where can we meet and where are we going to do this." When officer Kuhn suggested meeting at Burger King, Arveson added they could have sex in his car. The two discussed meeting the next day, with officer Kuhn stating, "I'm sure my parents will let me go to BK if we are meeting early … they'd just ask if it was after dark."

Arveson reinitiated contact that night, asking if they were still on for the next day. The two exchanged further text messages early the next morning, February 14, with Arveson asking for a nude picture and ultimately texting officer Kuhn a photo depicting an erect penis. Arveson did not go to the agreed meeting place that day. The next morning, February 15, Arveson initiated contact, asking if officer Kuhn wanted to meet for "wild sex." The two agreed to meet at 5:30 p.m., and when officer Kuhn indicated she could not obtain a condom because she is "only 15," Arveson agreed to bring a condom. Officer Kuhn stated she was with her cousin, and Arveson suggested bringing her cousin along. When Kuhn answered that her cousin was "only 12," and asked what Arveson would want her to do, he replied "BJ." Arveson was arrested shortly after 5:30 p.m. on a street just north of the designated Burger King.

The State charged Arveson with using a computer to facilitate a child sex crime; child enticement; and causing a child to view sexual activity. After Arveson's motion to dismiss the charge of using a computer to facilitate a child sex crime was denied, he entered into a plea agreement. In exchange for his no-contest plea to child enticement—sexual contact, the State agreed to dismiss the remaining counts outright and recommend a sentence consistent with the recommendation made in the presentence investigation report. Out of a maximum possible

twenty-five-year sentence, the circuit court imposed a six-year term consisting of three years' initial confinement followed by three years' extended supervision.

Any challenge to the denial of Arveson's motion to dismiss the charge of using a computer to facilitate a child sex crime would lack arguable merit. WISCONSIN STAT. § 948.075(1r) provides: "Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual … is guilty of a Class C felony." Arveson argued that his cellphone did not constitute a "computerized communication system." Our supreme court, however, rejected the same argument in ***State v. McKellips***, 2016 WI 51, 369 Wis. 2d 437, 881 N.W.2d 258. In concluding a cellphone constitutes a computerized communication system, the court recognized that a cellphone computes data typed into it, and that pushing buttons on a cellphone sends information through the device, creating images on the screen. ***Id.***, ¶36. The court further acknowledged that all cellphone carriers are connected to a server and use a computer system or network, particularly when sending text messages. ***Id.***

The record discloses no arguable basis for withdrawing Arveson's no-contest plea. In his response to the no-merit report, Arveson suggests he did not realize he was pleading no contest to child enticement with intent to have sexual contact under WIS. STAT. § 948.07(1). The record belies this claim. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Arveson completed, informed Arveson of the specific elements of this offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no-contest plea. The court confirmed that Arveson understood the court was not bound by the terms of the plea agreement, *see* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683

N.W.2d 14, and properly found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Arveson committed the crime charged. Although the circuit court failed to advise Arveson of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), the no-merit report indicates Arveson is a United States citizen not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit. The record shows the plea was knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

In his response, Arveson claims that law enforcement both accessed and deleted text messages from his cellphone without his consent, and these allegedly deleted text messages would have supported an entrapment defense. The record before this court does not support Arveson's allegations that there was an unlawful search of his cellphone or that text messages were deleted from the cellphone. Counsel's supplemental no-merit report likewise indicates that counsel did not locate any evidence to show that Arveson's cellphone was searched prior to law enforcement obtaining a valid search warrant. Further, according to the supplemental no-merit report, forensic testing of Arveson's cellphone failed to support Arveson's allegations of deleted or destroyed text messages.

Counsel notes that Arveson's claims center on his belief that the deleted text messages included statements by officer Kuhn indicating she was at least eighteen years old. Even if there were deleted messages indicating officer Kuhn had reached the age of majority, later text messages stated she was a minor. Additionally, Arveson requested that two minors meet him to engage in sexual contact—the undercover officer and her fictitious twelve-year-old cousin. Thus, even if the allegedly deleted text messages could have supported a claim that Arveson was

led to believe officer Kuhn was an adult, the text messages would have done nothing to refute the allegation that Arveson thought the cousin was a minor.

In any event, it is well established that a plea of guilty or no contest, knowingly, intelligently and voluntarily made, waives all non-jurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Princess Cinema of Milwaukee, Inc.***, 96 Wis. 2d 646, 651, 292 N.W.2d 807 (1980). At the plea hearing, defense counsel informed the circuit court:

> We've … discussed the defense of entrapment and how an entrapment defense would work. We also discussed possible search and seizure issues with relevance to a telephone that was seized and looked at and how the data could be obtained independently from the service provider, i.e. the phone company, and we've discussed the entire defense of the case.
>
> Given all that … with the dismissals outright, and the plea to Count 2, I think he's knowingly, voluntarily, and intelligently with the benefit of a negotiated plea settlement entering his plea.

Because Arveson knowingly, intelligently and voluntarily entered a no-contest plea, he has waived any claim of an entrapment defense. Any argument to the contrary would lack arguable merit.

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence that was well within the maximum allowed by law, the circuit court considered the seriousness of the offense; Arveson's character; the need to protect the public; and the mitigating factors Arveson raised. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentencing court determined that probation would depreciate the seriousness of this offense, finding Arveson's conduct to be "most grave." It cannot reasonably be argued that Arveson's sentence is 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.

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

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Erica L. Bauer is relieved of further representing Arveson in this matter. *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