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. John A. Damon
Circuit Court Judge
Trempealeau County Courthouse
36245 Main St.
Whitehall, WI 54773

Michelle Weisenberger
Clerk of Circuit Court
Trempealeau County Courthouse
36245 Main St.
Whitehall, WI 54773

Taavi McMahon
District Attorney
P.O. Box 67
Whitehall, WI 54773

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

Waylon Y. Ross 325235
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2017AP577-CRNM State of Wisconsin v. Waylon Y. Ross (L. C. No. 2015CF150)

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 Waylon Ross has filed a no-merit report concluding there is no arguable basis for Ross to withdraw his guilty plea or challenge the sentence imposed for second-degree sexual assault of a child. Ross filed a response raising issues relating to the sentence. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

Ross was initially charged with first-degree sexual assault of a child, incest, and causing a child under thirteen to view or listen to sexual activity. Pursuant to a plea agreement, Ross pled guilty to second-degree sexual assault of a child, and the remaining counts were dismissed and read-in for sentencing purposes. The court sentenced Ross to fifteen years' initial confinement and eight years' extended supervision.

The record discloses no arguable manifest injustice upon which Ross could withdraw his guilty plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form with attached jury instructions, informed Ross of the elements of the offense, the potential penalties, and the constitutional rights he waived by pleading guilty. As required by ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Ross that it would not be bound by the parties' sentence recommendations. The court gave Ross the deportation waring required by WIS. STAT. § 971.08(1)(c) (2015-16).[1] Ross denied the existence of any threats or promises that induced his plea. The record shows the plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. ***Id.*** at 293.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence of forty years' imprisonment and a $100,000 fine. The court appropriately considered the seriousness of the offenses, the effect on the victim, Ross's character, including numerous crimes and six failures on probation, and the need to protect the

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

public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). This sentence is not arguably so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Ross raises four issues in his response to the no-merit report. First, he alleges "the court had a problem with me working and how long I had worked at each job." Although Ross's work history was presented in the presentence investigation report (PSI), the record does not support any argument that the court based the sentence on that factor.

Ross next argues he was "sentenced off a chart or piece of paper." He is apparently referring to what the circuit court called an "internal document" used by the author of the PSI to arrive at a recommendation of twelve to twenty-five years' initial confinement and seven to eight years' extended supervision. The record would not support an argument that the sentence imposed by the circuit court was based on that document. The court faulted the PSI for its "wide recommendation," and stated it would consider the facts in the PSI but not the recommendation.

Ross next contends the sentencing judge was retiring and was "giving max sentences to everyone." The court did not impose the maximum sentence in this case, and there is no prohibition regarding imposition of maximum sentences. Ross also contends he should have had a different judge because the judge's wife was his high school English teacher and Ross knew the judge before he was a judge. Ross never requested substitution or recusal of the judge before sentencing. The relationships Ross describes are not sufficient to support a disqualification of the judge. *See* WIS. STAT. § 757.19.

Finally, Ross complains that he was sentenced for his past crimes, apparently referring to the sentencing court's consideration of his past record. Ross's prior convictions reflect his

character, a proper consideration for the sentencing court. *See* ***Elias v. State***, 93 Wis. 2d 278, 284-85, 286 N.W.2d 559 (1979).

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

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

IT IS FURTHER ORDERED that attorney Melissa Petersen is relieved of her obligation to further represent Ross 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