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December 20, 2017

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

2017AP1613-CRNM State of Wisconsin v. Tyler N. Bartelt (L.C. #2016CF963)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Tyler N. Bartelt appeals from a judgment convicting him of second-degree sexual assault. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Bartelt was advised of his right to file a response but

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

has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there are no issues with arguable merit for appeal and therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Eighteen-year-old Bartelt was staying at a Waukesha County motel while on a temporary job assignment. Fifteen-year-old “Mary”² and her mother also were staying at the motel. Bartelt followed Mary one morning as she walked her dog. When she reached a secluded area, Bartelt pinned her against a stack of old tires and had nonconsensual sexual intercourse with her. Mary reported the assault to her mother who immediately called police. Bartelt was charged with and pled guilty to second-degree sexual assault of a child under sixteen. He was sentenced to twelve years’ initial confinement and eight years’ extended supervision. This no-merit appeal followed.

The no-merit report first considers whether Bartelt’s guilty plea was knowing, voluntary, and intelligent. During the course of a plea hearing, a circuit court must address the defendant personally and fulfill several duties under WIS. STAT. § 971.08 and judicial mandates to ensure that the guilty plea is constitutionally sound. *State v. Brown*, 2006 WI 100, ¶¶34-36, 293 Wis. 2d 594, 716 N.W.2d 906.

The circuit court here did so, with a few exceptions. It did not expressly determine Bartelt’s educational level and general comprehension. *See id.*, ¶35. The plea questionnaire indicated that he had twelve years of schooling, understands English, is not under treatment for a mental illness or disorder, and had not had any alcohol, medications, or drugs within the last

² “Mary” is a pseudonym.

twenty-four hours. The court verified several times during the colloquy that Bartelt understood the form and the proceeding.

The court also failed to give Bartelt the deportation warning WIS. STAT. § 971.08(1)(c) mandates. The failure to do so is not grounds for relief, however, unless the defendant can show that his or her plea is likely to result in deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2); see *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. Nothing in the record suggests that Bartelt would be at risk of any of those consequences.

Further, the plea questionnaire/waiver-of-rights form that Bartelt signed advised him of those consequences.³ Bartelt confirmed to the court that he had enough time to review the form with counsel and that he understood it. There would be no merit to a motion to withdraw the plea based on the failure to give the deportation warning.

The no-merit report also considers whether a nonfrivolous argument could be made that Bartelt's sentence is overly harsh or otherwise the result of an erroneous exercise of discretion. None could. The court considered the gravity of the offense, Bartelt's character, and the need to protect the public from him. See *State v. Davis*, 2005 WI App 98, ¶13, 281 Wis. 2d 118, 698 N.W.2d 823. It noted that his acting out had ramped up from more minor juvenile infractions to a disturbing pattern of increasingly violent, aggressive felonies.

³ The form states: "I understand that if I am not a citizen of the United States, my plea could result in deportation, the exclusion of admission to this country, or the denial of naturalization under federal law."

The court explained that it ordered twelve years' confinement both for Bartelt's rehabilitative needs and for Mary to have time to work through the emotional trauma she now suffers. Further, his twenty-year total sentence—half the forty years that might have been imposed—does not shock the public sentiment or violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

Since his arrest in this case, Bartelt was charged in two other counties in “eerily” similar incidents that predated the assault against Mary and also involved fifteen-year-old girls. Those cases as yet were unresolved. No issue of merit could arise from the court's emphasis on those pending charges, however. A court “must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” *State v. Guzman*, 166 Wis. 2d 577, 591, 480 N.W.2d 446 (1992) (citation omitted). The court thus may consider uncharged and unproved offenses, and even facts related to offenses for which a defendant has been acquitted. *State v. Frey*, 2012 WI 99, ¶47, 343 Wis. 2d 358, 817 N.W.2d 436. No arguably meritorious challenge to the sentence could be maintained.

Our review of the record discloses no other potential issues for appeal. Bartelt'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 Bartelt 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 Michael S. Holzman is relieved from further representing Bartelt 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