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**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  
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**DISTRICT III**

December 19, 2017

To:

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

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

Alisha Lenae McKay  
Assistant State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

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

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

Ronald E. Forrer 644301  
Jackson Corr. Inst.  
P.O. Box 233  
Black River Falls, WI 54615-0233

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

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2017AP241-CRNM      State of Wisconsin v. Ronald E. Forrer (L. C. No. 2015CF112)

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).**

Attorney Kara Mele<sup>1</sup> filed a no-merit report concluding there is no arguable basis for Ronald Forrer to withdraw his guilty plea or to challenge the sentence imposed for sexual

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<sup>1</sup> Attorney Mele withdrew from this case after filing the no-merit report. She is replaced by Attorney Alisha McKay.

intercourse with a person under the age of sixteen. Forrer filed a response contending he was sentenced on the basis of erroneous information and the sentencing court failed to adequately review the defense sentencing memorandum. Forrer also now provides, to this court, additional information that he contends would justify a lesser 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.

The complaint charged Forrer with three counts of sexual assault of a child. Pursuant to a plea agreement, he entered a guilty plea to one count and the remaining counts were dismissed and read in for sentencing purposes. The circuit court imposed a sentence of nine years' initial confinement and three years' extended supervision.

The record discloses no arguable manifest injustice upon which Forrer could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's plea colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form, informed Forrer of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential penalties. Forrer was thirty-four years old and had completed twelve years of schooling. He stated he was taking medication as part of treatment for mental or emotional problems, but that medication did not interfere with his ability to understand the proceedings. The plea agreement was recited in open court and confirmed by the parties. The circuit court confirmed that no other promises were made in connection with the plea agreement. The court failed to question whether any threats were made in connection with the plea agreement, but Forrer's appellate counsel stated she is unaware of any information that would support a claim of a threat, and Forrer has identified none. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Forrer that it was not

bound by the parties' sentence recommendations. The court did not give the deportation warning required by WIS. STAT. § 971.08(1)(c) (2015-16).<sup>2</sup> However, the court confirmed that Forrer was a United States citizen and was not subject to deportation. The record shows the guilty 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 also shows no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence totaling forty years' imprisonment. The court appropriately considered the seriousness of the offense, Forrer's character, and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors, and the 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).

In his response to the no-merit report, Forrer lists numerous errors in the presentence investigation report (PSI). A defendant claiming he or she was sentenced on erroneous information must show both that the information was false and that the circuit court relied on it when determining the appropriate sentence. *State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. Many of the errors Forrer described were contained in the PSI. However, at the sentencing hearing, Forrer's counsel called attention to many of them. Numerous other errors—such as referring to a witness as the victim's aunt even though she clarified that she was not literally her aunt, misspelling of names and referring to half siblings as step siblings—were

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

not considered in the sentencing decision. Forrer contends a reference to the witness as the victim's aunt suggests that he had intercourse with his niece, and the victim is not his niece. However, at the sentencing hearing, the court did not base the sentence on the alleged relationship. Although the sentencing court stated its appreciation for the efforts of both counsel and the Department of Corrections to provide information to the court, nothing in the sentencing transcript indicates the court's reliance on the specific facts Forrer contests.

Forrer also faults the court for not having read the defense's sentencing memorandum before the sentencing hearing. At the hearing, the court reviewed the memorandum. Forrer does not identify any specific relevant information contained in the defense's memorandum that was not relayed to the court before it imposed the sentence.

Finally, Forrer attaches to his response two letters from the Veterans Service Office. One letter encourages Forrer to file a claim if he has been diagnosed with a mental health condition that could be related to his service, and suggests a possibility that he was "self-medicating to deal with some PTSD or similar condition." The second letter, addressed to whom it may concern, says Forrer has tried to obtain benefits based on his military service, but "the VA has not done their part to acknowledge or compensate Ron as they should. This is not from lack of trying on Ron's part. Among many physical disabilities, Ron also applied for service connection for his depression. Again the VA failed to step up."

Neither of these letters constitutes a new factor sufficient to support a sentence modification. A new factor is a fact or set of facts highly relevant to the sentence, that was not presented to the sentencing court either because it was not then in existence or because it was unknowingly overlooked by the parties. *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797

N.W.2d 828. Letters that describe Forrer's attempts to obtain benefits are not highly relevant to the sentence. Any deficiencies in the Veteran Administration's failure to provide benefits regarding Forrer's depression do not mitigate his offense of sexual assault of a child.

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 Alisha McKay is relieved of her obligation to further represent Forrer in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*