



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 II/IV

January 5, 2018

To:

Hon. Michael J. Aprahamian
Circuit Court Judge
Waukesha County Courthouse-Br. 9
515 W Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Carl W. Chesshir
Chesshir Law Office
S101 W34417 Hwy LO, Ste. B
Eagle, WI 53119

Susan Lee Opper
District Attorney
515 W. Moreland Blvd. Rm. G-72
Waukesha, WI 53188-2486

Ryan A. Anderson 641973
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:

2016AP2111-CRNM State of Wisconsin v. Ryan A. Anderson (L.C. # 2015CF1473)

Before Lundsten, P.J., Sherman and Fitzpatrick, 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 Carl Chesshir, appointed counsel for Ryan A. Anderson, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there

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

would be arguable merit to a challenge to Anderson's plea or sentencing. Anderson was sent a copy of the report and has filed a response arguing that he should be resentenced to below the mandatory minimum set by statute. Upon independently reviewing the entire record, as well as the no-merit report and response, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Anderson was charged with one count of using a computer to facilitate a child sex crime. Pursuant to a plea agreement, Anderson pled guilty and the State recommended the mandatory minimum of five years of initial confinement. Defense counsel also argued for the mandatory minimum term of initial confinement. The circuit court imposed the mandatory minimum of five years of initial confinement, plus eighteen months of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Anderson's plea. A post-sentencing motion for plea withdrawal must establish that the plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Anderson and determine information such as Anderson's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Anderson's plea would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a challenge to Anderson's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Anderson was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Anderson's character, the seriousness of the offense, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Anderson to the mandatory minimum of five years of initial confinement, plus eighteen months of extended supervision. The term of initial confinement was required by statute, *see* WIS. STAT. § 939.617(1), and the term of extended supervision was well within the maximum Anderson could have received, *see* WIS. STAT. § 973.01(2)(d)2. We discern no erroneous exercise of the court's sentencing discretion.

Anderson has filed a response asserting that he should be resentenced to a term of initial confinement below the mandatory minimum. Anderson asserts that he believes the circuit court had authority to depart from the mandatory minimum and impose a lesser sentence. However, WIS. STAT. § 939.617(1) required the circuit court to impose a minimum of five years of initial confinement. *See* § 939.617(1) (providing that, in imposing a sentence for a violation of WIS. STAT. § 948.075, "the court shall impose a bifurcated sentence" and that "[t]he term of confinement in prison portion of the bifurcated sentence shall be at least 5 years."). Because the circuit court could not have imposed less than five years of initial confinement, we discern no

arguable merit to Anderson's argument that the circuit court should have departed from the mandatory minimum.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl Chesshir is relieved of any further representation of Ryan A. Anderson 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
Acting Clerk of Court of Appeals