



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/II

March 14, 2018

To:

Hon. Patrick F. O'Melia
Circuit Court Judge
Oneida County Courthouse
1 Courthouse Square
Rhineland, WI 54501

Brenda Behrle
Clerk of Circuit Court
Oneida County Courthouse
P.O. Box 400
Rhineland, WI 54501

Megan Sanders-Drazen
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Michael W. Schiek
District Attorney
P.O. Box 400
Rhineland, WI 54501

Monte A. Bartelt 268601
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

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:

2016AP2061-CRNM State of Wisconsin v. Monte A. Bartelt (L.C. #2015CF195)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Monte A. Bartelt appeals from a judgment convicting him of repeated sexual assault of the same child contrary to WIS. STAT. § 948.025(1)(e) (2015-16).¹ Bartelt's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S.

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

738 (1967). Bartelt received a copy of the report and has filed a response. Upon consideration of the report, Bartelt's response, and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Bartelt's no contest plea was knowingly, voluntarily, and intelligently entered and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his no contest plea, Bartelt answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. As part of the plea colloquy, the circuit court drew Bartelt's attention to the specific constitutional rights waived by the no contest plea. The court confirmed that Bartelt read and understood the questionnaire, pointed out the presence of the constitutional rights appearing on the front of the questionnaire, and confirmed that Bartelt read and understood those rights. *Id.*, ¶¶30-32, 42 (although a plea questionnaire cannot be relied upon as a substitute for a substantive in-court personal colloquy, the questionnaire may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken and the use of the questionnaire lessens the extent and degree of the requisite colloquy). The plea questionnaire form Bartelt signed is competent evidence of a knowing and voluntary plea. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). The record discloses that Bartelt's no contest plea was knowingly, voluntarily, and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis,

State v. Harrington, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Bartelt’s no contest plea.

With regard to the sentence, the record reveals that the sentencing court’s discretionary decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Bartelt to a twenty-nine-year term (fourteen years of initial confinement and fifteen years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense; Bartelt’s character, history of substance abuse, and lengthy prior record of offenses; the impact on the child victim and her mother; Bartelt’s lack of insight into the circumstances of the crime; and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight of the sentencing factors was within the circuit court’s discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. The sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In his response to counsel’s no-merit report, Bartelt admits his unlawful conduct with the child, but he also claims that he is innocent and the fourteen-year-old victim consented to sexual intercourse.² Bartelt contends that his substance abuse issues and drinking-to-blackout led him

² As Bartelt was informed by the circuit court during the plea colloquy, consent is not a defense. WIS. STAT. §§ 948.025(1)(e), 948.02(2); *State v. Lackershire*, 2007 WI 74, ¶29, 301 Wis. 2d 418, 734 N.W.2d 23.

to have sex with the child, he had untreated mental health issues, he was confused at the plea hearing, the victim and her mother lied at sentencing when they spoke about the impact of the crime,³ his trial counsel was ineffective because counsel predicted the circuit court would accept the State's recommended five-year sentence and told him he could counter the victim's "lies" at some point in the proceeding, he did not get to offer a defense, and he wanted to enter a WIS. STAT. § 971.06(1)(d) not guilty by reason of mental disease or defect plea.

In light of the record before the court, Bartelt's response does not present any issue with arguable merit. At the plea colloquy, the circuit court confirmed with Bartelt at multiple points in the colloquy that he wanted to enter a no contest plea. The court informed Bartelt that the victim's alleged "consent" was not a defense to the crime, the court could impose the maximum penalty, and Bartelt's no contest plea waived various constitutional rights, including the right to a trial. The court confirmed that Bartelt understood the proceeding and that his ability to understand the proceeding was not impaired by mental illness. Bartelt's counsel also confirmed to the court that Bartelt understood the proceeding. Bartelt confirmed that he had sufficient time to consult with counsel and he understood the offense and the consequences of his no contest plea. Bartelt acknowledged that the factual basis for the no contest plea was stated in the complaint, and he expressed remorse at sentencing for his conduct. Bartelt's no contest plea waived all nonjurisdictional defects and defenses. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. In addition, Bartelt's claims are at odds with the record and the positions he took in the circuit court. *State v. Michels*, 141 Wis. 2d 81, 98, 414 N.W.2d 311 (Ct.

³ At sentencing, the circuit court specifically found the victim credible when she described Bartelt's conduct and the number of times Bartelt sexually assaulted her.

App. 1987) (a party cannot take inconsistent positions). We conclude Bartelt's claims lack arguable merit for appeal.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Megan Sanders-Drazen of further representation of Bartelt in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen relieved of further representation of Monte A. Bartelt in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals