



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 IV/III

March 20, 2018

To:

Hon. Wendy J.N. Klicko
Circuit Court Judge
Sauk County Courthouse
515 Oak Street
Baraboo, WI 53913

Carrie Wastlick
Clerk of Circuit Court
Sauk Co. Courthouse
515 Oak Street
Baraboo, WI 53913-0449

Kevin R. Calkins
District Attorney
515 Oak Street
Baraboo, WI 53913

Michael J. Herbert
10 Daystar Ct., Ste. C
Madison, WI 53704-7358

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

Ricardo F. Moliner-Wetzel 453016
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2017AP1647-CRNM State v. Ricardo F. Moliner-Wetzel
(L. C. No. 2016CM483)

Before Hruz, J.¹

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 Ricardo F. Moliner-Wetzel filed a no-merit report concluding there is no arguable basis for Moliner-Wetzel to withdraw his no-contest plea or to challenge the sentence

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

imposed for sexual intercourse with a child as a repeater. Moliner-Wetzel was advised of his right to respond to the report and did not respond. However, this court directed counsel to file a supplemental report addressing two issues: (1) the circuit court's failure to give the deportation warning required by WIS. STAT. § 971.08(1)(c); and (2) the court's failure to address a disclosure in the plea questionnaire and waiver of rights form that Moliner-Wetzel was undergoing psychiatric treatment and had consumed drugs or alcohol within twenty-four hours of entering his plea. Upon this court's review of the supplemental no-merit report as required by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears.

The complaint charged Moliner-Wetzel with intercourse with a child as a repeater. The intercourse charge is a misdemeanor normally punishable by nine months' confinement and a \$10,000 fine. *See* WIS. STAT. §§ 948.09 & 939.51(3)(a). However, because Moliner-Wetzel was charged as a repeater, the maximum term of confinement could be increased to not more than two years. *See* WIS. STAT. § 939.62(1)(a). Pursuant to a plea agreement, Moliner-Wetzel entered a no-contest plea, and the court imposed the jointly recommended sentence of one year of jail confinement to run concurrent with another sentence.

Our independent review of the record confirms counsel's assertion that the circuit court's colloquy properly informed Moliner-Wetzel of the constitutional rights he waived by pleading no contest, the elements of the offense, the potential penalties, and the fact that the court was not bound by the parties' sentencing agreement. Because the supplemental no-merit report states Moliner-Wetzel was a citizen of the United States not subject to deportation, the court's failure to give the required deportation warning constituted a harmless error.

Regarding Moliner-Wetzel's mental state and the drugs he took due to that condition, counsel states he could not in good faith allege that Moliner-Wetzel's psychological condition and the drugs he took interfered with his ability to meaningfully participate in the proceedings. That assertion is confirmed by Moliner-Wetzel's appropriate answers to the circuit court's questions at the plea hearing. At the plea hearing, Moliner-Wetzel assured the court that he understood his constitutional rights, the effect of his no-contest plea, the elements of the offense, and the potential penalties. At the sentencing hearing conducted immediately after the court accepted the no-contest plea, Moliner-Wetzel took responsibility for the offense, spoke about his parents, and asked the court to "go with the sentencing recommendation." Based on Moliner-Wetzel's meaningful participation in these hearings and postconviction counsel's discussions with Moliner-Wetzel, counsel reasonably concluded there is no basis for withdrawing the no-contest plea.

The jointly recommended sentence cannot be challenged on appeal. *State v. Sherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). In addition, the one-year sentence is well within the two-year maximum, and is therefore presumptively not unduly harsh. *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507.

This court's 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 Michael Herbert is relieved of his obligation to further represent Moliner-Wetzel in this matter. WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals