



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

June 11, 2018

To:

Hon. Ramona A. Gonzalez
Circuit Court Judge
La Crosse County Courthouse
333 Vine Street
La Crosse, WI 54601

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
333 Vine Street, Room 1200
La Crosse, WI 54601

Noel A. Lawrence
Assistant District Attorney
333 Vine St., Rm. 1100
La Crosse, WI 54601-3296

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

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

Jonathan L. Hart 648133
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:

2017AP706-CRNM State of Wisconsin v. Jonathan L. Hart (L.C. # 2015CF414)

Before Lundsten, P.J., Sherman and Kloppenburg, 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 Alisha McKay, appointed counsel for Jonathan Hart, 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 would be

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

arguable merit to a challenge to Hart's plea or sentencing. Hart was sent a copy of the report, and has filed a response. 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.

Hart was charged with one count of sexual assault of a child under sixteen years of age and one count of repeated sexual assault of a child. Pursuant to a plea agreement, Hart entered an *Alford*² plea to repeated sexual assault of a child, the other sexual assault count was dismissed, and the State limited its sentencing argument to fifteen years of initial confinement. The court sentenced Hart to six years of initial confinement and four years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Hart's plea. A postsentencing motion for plea withdrawal must establish that 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, together with the plea questionnaire that Hart signed, satisfied the court's mandatory duties to personally address Hart and determine information such as Hart'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

² See *North Carolina v. Alford*, 400 U.S. 25 (1970); *State v. Garcia*, 192 Wis. 2d 845, 856, 532 N.W.2d 111 (1995) ("An *Alford* plea is a guilty plea in which the defendant pleads guilty while either maintaining his innocence or not admitting having committed the crime.").

consequences of the plea.³ See *State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 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 Hart’s plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Hart’s sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins “with the presumption that the [circuit] 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). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Hart’s character, 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. We discern no basis to challenge the sentence imposed by the circuit court.

Hart argues in his response that he was denied the opportunity to explain his side of the story. He asserts that he believed that, after entering his plea, he would have the opportunity to explain his side of the story through the presentence investigation (PSI) process. Hart contends that the PSI author had a preconceived negative view of Hart based on the facts of this case and her misconception of an *Alford* plea, and that she was not interested in the truth. Hart asserts that his understanding was that an *Alford* plea did not proclaim guilt or innocence, but that there

³ The no-merit report notes that the court failed to inform Hart that it was not bound by the terms of the plea agreement, as required under *State v. Hampton*, 2004 WI 107, ¶32, 274 Wis. 2d 379, 683 N.W.2d 14, but asserts that Hart could not allege that he did not understand that the court was not bound by the plea agreement. Hart has not challenged that statement in his no-merit response. Accordingly, we agree with counsel that it would be wholly frivolous to pursue plea withdrawal on that basis. See *id.*, ¶46 (postconviction motion for plea withdrawal must allege that the defendant did not understand the information that the circuit court should have provided at the plea hearing).

is sufficient evidence to obtain a conviction. Hart also asserts that the judge sentenced him out of anger and that the judge was biased against him, and that the judge disregarded the defense's alternate PSI because it did not recommend sufficient prison time to appease the judge's anger. Lastly, Hart asserts that his constitutional right to freedom of religion was infringed upon because Hart's religious beliefs allowed for the relationship between Hart and the victim. Hart asserts that the truth is that the victim made her own choices as a young woman and that Hart honored the victim's choices because he loved her.

We discern no issue of arguable merit based on the assertions set forth in the no-merit response. The PSI and the alternative PSI set forth Hart's explanation that his religious beliefs allowed him to engage in sexual intercourse with the victim when Hart was in his mid-forties and the victim was thirteen to fourteen years old. The alternative PSI includes Hart's detailed account of the timeline of Hart's relationship with the victim, including their "spiritual marriage" prior to engaging in sexual intercourse. Hart exercised his right of allocution to apologize for his actions, and stated that he never intended to harm anyone, only to help. The court noted the dispute as to the significance of Hart entering an *Alford* plea, stating that the court gave Hart consideration for not insisting on a very bad trial, and that Hart received a lesser sentence as a result. Thus, Hart was able to fully set forth his account of his actions and his reasons for his actions to the court.

The sentencing judge explained that she was angry about the lack of progress in addressing child sexual abuse in the twenty years she had been a judge, and specifically referenced a similar sexual assault case she had presided over twenty years prior. The sentencing judge also explained to Hart that he had deluded himself into believing that he was in a "relationship" with the child victim and that Hart's religious beliefs did not justify his engaging

in sexual intercourse with a child. The judge explained that she considered and disagreed with the alternative PSI's recommendation. The judge also explained that she was following the recommendation in the PSI submitted by the Department of Corrections because she wanted to avoid sentencing Hart out of anger, and that if she were sentencing Hart out of anger, she would impose a longer sentence than recommended in the PSI. The court also explained that she was imposing a lesser sentence than in the prior child sexual assault case that the judge had referenced throughout sentencing, noting the difference that, here, there was not a familial relationship between Hart and the victim. Thus, the sentencing judge explained that she was angry about child sexual assaults and Hart's sexual assault of the child victim in this case, but also that the judge did not sentence Hart based on her anger. The judge sentenced Hart to six years of initial confinement and four years of extended supervision, far less than the maximum of twenty-five years of initial confinement and fifteen years of initial confinement allowed by statute, and also less than the fifteen years of initial confinement recommended by the State. *See* WIS. STAT. §§ 948.025(1)(e); 939.50(3)(c); and 973.01(2)(b)3. Nothing in the record, no-merit report or no-merit response would support a non-frivolous argument that the judge was biased or that the sentence imposed was improper.

Finally, the court recognized Hart's explanation that his religious beliefs justified his actions and that Hart viewed his sexual assault of the victim as a "relationship." The court explained that Hart's religious beliefs did not excuse his repeated sexual assault of a child. Hart was convicted and sentenced in this case for violating WIS. STAT. § 948.025(1) by committing three or more acts of sexual intercourse with the victim when she was thirteen to fourteen years old, not for his religious beliefs related to his actions. Any argument that Hart's religious

freedom was infringed when Hart was convicted and sentenced for repeated sexual assault of a child would be wholly frivolous.

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 Alisha McKay is relieved of any further representation of Jonathan Hart in this matter. *See* 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