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August 31, 2018

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

2017AP268-CRNM State of Wisconsin v. Aaron M. Davis (L.C. # 2015CF139)

Before Lundsten, P.J., Kloppenburg 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).

Aaron Davis appeals an amended judgment convicting him of two counts of exposing genitals to a child. He also appeals an order denying his motion for postconviction relief. Attorney Colleen Marion has filed a no-merit report seeking to withdraw as appellate counsel.

See WIS. STAT. RULE 809.32 (2015-16);[1] ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of Davis's pleas and sentences and the circuit court's determination that Davis would need to register as a sex offender. Davis was sent a copy of the report, but has not filed a response.

By prior order, we placed this case on hold to await an opinion determining whether a defendant who was not advised at the time of the plea that he or she faced multiple mandatory DNA surcharges has grounds for plea withdrawal. This court has now issued a published decision concluding that recent decisions by the Wisconsin Supreme Court defeat any such claim. *See* ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __.

Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Davis's ability to understand the proceedings and the voluntariness of his pleas, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. In addition, Davis provided the court with a signed plea questionnaire, with attached jury instructions. The facts set forth in the complaint and acknowledged by Davis to be substantially true and correct—namely, that Davis had had sexual contact with the teenaged child of a family friend on multiple occasions—provided a sufficient factual basis for the pleas. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court's

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

obligations under WIS. STAT. § 971.08. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We further note that there is nothing in the record to suggest that trial counsel's performance was in any way deficient leading up to the pleas, and Davis has not alleged any other facts that would give rise to a manifest injustice warranting plea withdrawal.

A challenge to Davis's terms of probation would also lack arguable merit. The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case, emphasizing that Davis had already received a significant break by the reduction of the charges from Class C felonies to Class I felonies. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then withheld sentence, and imposed concurrent three-year terms of probation, subject to one year of conditional jail time on each count. The court further determined, in furtherance of the public interest, that Davis would need to report to the sexual offender registry for fifteen years and would not be eligible for expungement.

The terms of probation and conditional jail time imposed did not exceed the maximum available penalties. *See* WIS. STAT. §§ 948.10(1)(a) (classifying exposing genitals to a child as a Class I felony); 973.01(2)(b)9. and (d)6. (providing maximum terms of one and a half years of initial confinement and two years of extended supervision for a Class I felony); 973.09(2)(b) (setting term of probation for a felony at not less than one year and not more than the greater of three years or the initial period of confinement); 973.09(4) (allowing up to one year of jail as a condition of probation) (all 2013-14). Nor were the terms of probation and conditional jail time unduly harsh, taking into account the impact of the crimes on the victim and her family. *See generally* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon an 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.

Accordingly,

IT IS ORDERED that the amended judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Assistant State Public Defender Colleen Marion is relieved of any further representation of Aaron Davis in this matter pursuant to 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