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**DISTRICT II**

September 12, 2018

To:

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

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2018AP413-CRNM      State of Wisconsin v. Darren D. Struebing, Sr. (L.C. #2016CF362)

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).**

Darren Struebing, Sr., appeals from a judgment convicting him of child enticement contrary to WIS. STAT. § 948.07(1) (2015-16).<sup>1</sup> Struebing's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967).

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

Struebing received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report 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 Struebing'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, Struebing 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 Struebing's attention to the plea questionnaire and waiver of rights form Struebing signed. The court confirmed that Struebing read and understood the questionnaire and conferred with counsel about the contents of the questionnaire. The court pointed out the constitutional rights appearing on the front of the questionnaire and the elements of the offense attached to the questionnaire, and confirmed that Struebing read and understood those rights and elements and that Struebing did not require further explanation from the court. *See 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 Struebing signed is competent evidence of a knowing and voluntary plea. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987).

The record discloses that Struebing's no contest plea was knowingly, voluntarily and intelligently entered, *see State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, *see 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 Struebing's no contest plea.

With regard to the twenty-two year sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *See 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 Struebing. In fashioning the sentence, the court considered the seriousness of the offense and Struebing's character and placed the greatest weight on the need to protect the public. *See 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 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 Timothy O'Connell of further representation of Struebing 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 Timothy O'Connell is relieved of further representation of Darren Struebing, Sr. in this matter.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*