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September 19, 2018

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

2016AP1857-CRNM State of Wisconsin v. Jeremy C. Vaughn (L.C. #2014CF3350)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Jeremy C. Vaughn appeals from a judgment convicting him of exposing genitals to a child and fourth-degree sexual assault. Vaughn's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738 (1967).

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

Vaughn filed a response and appellate counsel filed a supplemental no-merit report. Upon consideration of the original and supplemental no-merit reports, Vaughn's response, and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Based on allegations that he engaged in various acts of sexual intercourse with a friend's daughter before and after her sixteenth birthday, Vaughn was charged with one count of second-degree sexual assault of a child (intercourse with a child under the age of sixteen), a Class C felony, and three counts of sexual intercourse with a child who had attained the age of sixteen, a Class A misdemeanor. As part of a negotiated settlement, Vaughn pled guilty to an amended information charging one count of exposing genitals to a child, a Class I felony, and one count of fourth-degree sexual assault, a Class A misdemeanor. The State agreed to recommend thirty months of probation with an imposed and stayed sentence comprising one and one-half years' initial confinement and two years' extended supervision, and conditional jail time in an amount to be determined by the court. The State further agreed to leave to the court's discretion whether Vaughn should be required to register as a sex offender. At sentencing, trial counsel agreed with the State's recommendation but argued that Vaughn should not be required to serve any conditional jail time or to register as a sex offender. The circuit court imposed but stayed the maximum sentence on both counts and placed Vaughn on a thirty-month term of probation with conditions, including thirty days of conditional jail time. The court ordered that Vaughn register as a sex offender. This no-merit appeal follows.

The no-merit report addresses whether Vaughn's pleas were knowingly, voluntarily and intelligently entered. During the plea hearing the circuit court fulfilled each of the duties set

forth in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record shows that the plea-taking court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon the defendant's signed plea questionnaire and attachments. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). No issue of merit exists from the plea taking.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing 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 considered the seriousness of the offense, Vaughn's character, and 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 court determined that the offenses were aggravated by the age difference between Vaughn and the victim, the violation of trust placed in Vaughn by the family "who invited [him] into their home," and the effect on the victim. Though the victim's mother asked for a prison sentence, the court determined that an imposed and stayed sentence with probation was appropriate given Vaughn's character and the possibility that the conduct "could be fairly isolated." *See* **Gallion**, 270 Wis. 2d 535, ¶44 (sentencing court should consider probation as the first alternative). The sentencing court considered appropriate factors, did not consider improper factors, and reached a reasonable result. Further, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Vaughn's sentence would lack arguable merit.

In his response, Vaughn asserts that he was not read his ***Miranda***[2] warnings "at all." Counsel's supplemental no-merit report asserts that Vaughn was not subjected to custodial interrogation. Vaughn has not filed a response contradicting counsel's assertion and we accept it as true. As discussed in the supplemental no-merit report, Vaughn's complaint is immaterial because he did not make inculpatory statements pursuant to a custodial interrogation. Additionally, Vaughn's guilty pleas forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See* ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. In entering his pleas, Vaughn explicitly acknowledged that he was giving up his right to "bring any motions" challenging the lawfulness of his statements. Vaughn signed an addendum to the plea questionnaire acknowledging his understanding that by pleading guilty, he gave up his right to "challenge the constitutionality of any police action such as … taking a statement from me." No issue of arguable merit arises from Vaughn's complaint.

Vaughn's response sets forth various claims relating to the sufficiency of the evidence against him.[3] Counsel's supplemental no-merit report addresses these claims in detail. By pleading guilty, Vaughn forfeited his right to raise these claims. ***Id***. Additionally, the plea-taking court ascertained Vaughn's understanding that by entering his guilty pleas, Vaughn was giving up the ability to bring any defenses. Vaughn signed an addendum to the plea questionnaire

[2] ***Miranda v. Arizona***, 384 U.S. 436, 444 (1966) (a person should not be subjected to custodial interrogation until "warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed").

[3] Vaughn complains about the lack of evidence tying him to the victim's text messages, inconsistencies in the victim's statements, the lack of DNA evidence, perceived problems with witness statements, and trial counsel's failure to investigate Vaughn's alibi witness.

acknowledging his understanding that "by pleading I am giving up my right to challenge the sufficiency of the complaint," and to raise any defenses such as "alibi." Further, trial counsel filed a notice of alibi regarding the witness named in Vaughn's response; knowing this, Vaughn chose to waive his right to a jury trial. We agree with appellate counsel's analysis of these issues as lacking arguable merit.

Vaughn appears to challenge the validity of his pleas, asserting that he pled "under duress for the plea deal," and that the plea deal he "was promised included no jail time and no Sex Offender Registry." As set forth in detail in appellate counsel's supplemental no-merit report, these claims are directly contradicted by the record, including the plea waiver forms and Vaughn's statements in open court. We are satisfied that the original and supplemental no-merit reports analyze these potential issues as without arguable merit and will not discuss them further.

Vaughn's response states several objections to the circuit court's order requiring that he register as a sex offender. Whether to order sex-offender registration is part of the circuit court's sentencing discretion. ***State v. Jackson***, 2012 WI App 76, ¶7, 343 Wis. 2d 602, 819 N.W.2d 288. We agree with the analysis in the supplemental no-merit report that any challenge to the circuit court's exercise of discretion in ordering sex offender registration would be without merit. Based on Vaughn's crimes of conviction, the circuit court had the discretion to order registration upon a determination that the underlying conduct was sexually motivated and that it would be in the interest of public protection to have Vaughn report. *See* WIS. STAT. § 973.048(1m)(a). In determining the public interest, the court may consider factors such as the ages of the victim and the defendant, the nature of their relationship, and "[a]ny other factor" the circuit court deems relevant. *See* § 973.048(3)(a)-(g).

In ordering registration, the circuit court cited the "the serious violation of trust" inherent in Vaughn's relationship to the victim and stated:

> I think that anybody that's going to invite you into their home, invite you into any relationship should be aware of what you've done here in terms of the taking advantage of this young girl in the way that you did and violating the trust that was placed in you.

This is a proper consideration. Further, in fashioning sentence the court considered that Vaughn was nearly twice the victim's age and that the underlying conduct supported more serious charges than the crimes of conviction. *See* ***State v. Lechner***, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998) ("[W]e will 'search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained.'" (citation omitted)). The circuit court based its decision on the proper law and facts and reasoned its way to a result that a reasonable judge could reach. *See* ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

Our independent review of the record reveals no other potential issues of arguable merit.[4] Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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[4] Two mandatory DNA surcharges were assessed on the judgment of conviction. Because of the multiple DNA surcharges, we previously put this appeal on hold pending a decision in ***State v. Freiboth***, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (No. 2015AP2535-CR). ***Freiboth*** holds that a plea-taking court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

IT IS FURTHER ORDERED that Attorney J. Dennis Thornton is relieved from further representing Jeremy C. Vaughn 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