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DISTRICT II

September 19, 2018

To:

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

2016AP407-CRNM State of Wisconsin v. David M. Jarzynka (L.C. #2014CF393)

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).

David M. Jarzynka appeals from a judgment convicting him of six counts of possession of child pornography. Jarzynka's appointed 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).

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

Jarzynka was advised of his right to file a response but has elected not to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The no-merit report first considers whether Jarzynka's no-contest pleas were knowing, voluntary, and intelligent. During the course of a plea hearing, a circuit court must address the defendant personally and fulfill several duties under WIS. STAT. § 971.08 and judicial mandates to ensure that the guilty plea is constitutionally sound. *State v. Brown*, 2006 WI 100, ¶¶34-36, 293 Wis. 2d 594, 716 N.W.2d 906.

The circuit court conducted a meaningful colloquy that incorporated Jarzynka's signed plea questionnaire. The court discussed the elements, which were attached to the plea questionnaire, and confirmed that Jarzynka understood them. It informed Jarzynka, and confirmed that he understood, that it was not bound by the recommendation of either party and could impose the maximum penalty. *See State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. The court recited the constitutional rights Jarzynka was waiving, verified that he had no further questions, and found a factual basis from the criminal complaint. It also informed Jarzynka of collateral effects such as the child pornography surcharge, *see* WIS. STAT. § 973.042(2), and the possibility that he could be evaluated as a sexual predator. Our review of the record satisfies us that Jarzynka's no-contest pleas were entered knowingly, voluntarily, and intelligently.

The no-merit report also considers whether the trial court erroneously exercised its discretion in sentencing Jarzynka. Upon review of the record, we are satisfied that counsel thoroughly analyzed the issue, and we discuss it no further.

Our independent review of the record discloses no other potentially meritorious issue for appeal.² Therefore,

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

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved from further representing Jarzynka in this appeal. *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

² Six mandatory DNA surcharges were assessed on the judgment of conviction. Because of the multiple DNA surcharges, we put this appeal on hold pending the Wisconsin Supreme Court's decision in *State v. Odom*, No. 2015AP2525-CR. *Odom* was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his or her plea that multiple mandatory DNA surcharges would be assessed, but the *Odom* appeal was voluntarily dismissed before oral argument. This case then was held for a decision in *State v. Freiboth*, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (No. 2015AP2535-CR). *Freiboth* holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge, as the surcharge is neither punishment nor 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.