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

September 14, 2018

To:

Hon. James P. Daley
Circuit Court Judge
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
51 S. Main Street
Janesville, WI 53545

Perry L. Folts
Deputy District Attorney
51 S. Main St.
Janesville, WI 53545

Jefren E. Olsen
Asst. 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

Justin Eugene Jones 437116
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2017AP340-CRNM State of Wisconsin v. Justin Eugene Jones (L.C. # 2014CF2412)

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).

Justin Jones appeals related judgments[1] convicting him of two counts of second-degree sexual assault of a child, two counts of child enticement, and one count of using a computer to

[1] Although the notice of appeal refers to a judgment in the singular, we note that the circuit court entered separate judgments for the counts on which it imposed prison sentences and those on which it ordered probation.

facilitate child sex crime. Attorney Jefren Olsen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);[2] ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of Jones's pleas and sentences. Jones 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. ***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 Jones'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, Jones provided the court with a signed plea questionnaire, with attached jury instructions. The facts set forth in the complaint—namely, that Jones made contact with two teenaged girls through Facebook, exchanged nude photos and had oral and anal sex with one of them in his car, and exchanged nude photos and attempted to set up a meeting with the other girl—provided a sufficient factual basis for the pleas. In conjunction with the plea questionnaire

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

and complaint, the colloquy was sufficient to satisfy the court's 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 plea, and Jones has not alleged any other facts that would give rise to a manifest injustice.

A challenge to Jones's sentences 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 Jones "took away [the] childhood" of the victim. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Jones to concurrent terms of twelve years of initial confinement and fifteen years of extended supervision on the facilitation count and one of the sexual assault counts. On each of the remaining three counts, the court initially imposed ten years of initial confinement and fifteen years of extended supervision, concurrent to each other but consecutive to the first sentence, to be stayed subject to a fifteen year term of probation. The court also awarded 486 days of sentence credit and imposed standard costs and conditions of supervision. The court subsequently commuted the extended supervision terms on the two child enticement counts to ten years each.

The amended sentences do not exceed the maximum available penalties. *See* WIS. STAT. §§ 948.075(1r) (classifying use of a computer to facilitate a child sex crime as a Class C felony); 948.02(2) (classifying second-degree sexual assault of a child as a Class C felony); 948.07(1) (classifying child enticement-sexual contact as a Class D felony); 973.01(2)(b)3. and (d)2.

(providing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony); 973.01(2)(b)4. and (d)3. (providing maximum terms of fifteen years of initial confinement and ten years of extended supervision for a Class D felony); 973.09 (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). Nor are the sentences unduly harsh, particularly taking into account that there were five additional read-in offenses. *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 judgments 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 judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jefren Olsen is relieved of any further representation of Justin Jones 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