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DISTRICT II

January 9, 2019

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

2018AP1566-CRNM State of Wisconsin v. Patrick B. McAuly (L.C. #2016CF265)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, 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).

Patrick B. McAuly appeals from a judgment convicting him of second-degree sexual assault of a child. McAuly's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). McAuly received a

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

copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

McAuly was convicted following an *Alford*² plea to second-degree sexual assault of a child. The charge stemmed from allegations that he had sexual contact with a fourteen-year-old girl in 2015. Several additional offenses were dismissed and read in.³ The circuit court sentenced McAuly to twenty years of initial confinement and ten years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether McAuly's *Alford* plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with McAuly that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. Finally, the court explained the effect of the *Alford* plea and established that there was strong evidence of guilt to support it. We agree with counsel that any challenge to the entry of McAuly's *Alford* plea would lack arguable merit.

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

² See *North Carolina v. Alford*, 400 U.S. 25 (1970).

³ The dismissed and read-in offenses were (1) second-degree sexual assault of a child; (2) first-degree sexual assault of a child as a repeater; and (3) child enticement.

(citation omitted). The court considered the seriousness of the offense, McAuly'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. Under the circumstances of the case, which were aggravated by the read-in offenses and McAuly's prior convictions for sexual assault, 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 counsel that a challenge to McAuly's sentence would lack arguable merit.

Finally, the no-merit report addresses whether McAuly was afforded effective assistance of trial counsel. There is nothing to suggest that McAuly received ineffective assistance. Indeed, at the plea hearing, McAuly indicated that he was satisfied with counsel's representation in the case. Consequently, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

Our independent review of the record does 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 and relieve Attorney Daniel R. Goggin, II, of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel R. Goggin, II, is relieved of further representation of McAuly in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals