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DISTRICT IV

February 25, 2019

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

2017AP1596-CRNM State of Wisconsin v. William J. Bonney (L.C. # 2015CF251)

Before Lundsten, P.J., Blanchard, and Fitzpatrick, 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).

William Bonney appeals an amended judgment convicting him, based upon a no-contest plea, of first-degree sexual assault.[1] Assistant State Public Defender Ellen Krahn has filed a no-

[1] Although the judgment states "great bodily harm," the complaint charged Bonney with first-degree sexual assault causing pregnancy, contrary to WIS. STAT. 940.225(1)(a) (2017-18), and that is the (continued)

merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of Bonney's plea and sentence. Bonney was sent a copy of the report and has filed three responses raising a series of complaints, focused largely on his ability to understand the proceedings and whether or not he used force against the victim. Upon reviewing the entire record, as well as the no-merit report and Bonney's responses, 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 Bonney's ability to understand the proceedings and the voluntariness of his plea. The court's colloquy explored his understanding of the nature of the charges, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. In addition, Bonney provided the court with a signed plea questionnaire, with an attached sheet setting forth the elements of the offense. Bonney advised the court that his attorney had read the plea questionnaire to him in detail, and that he understood all of the information on it.

Bonney now claims that he did not have sufficient time to discuss his case with counsel and that he "wasn't understanding things because of being a slow learner in school" and because he was upset that his wife was divorcing him. However, Bonney does not assert that counsel

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charge to which Bonney entered his plea. Therefore, we will modify the judgment to conform to the record.

All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

provided him with any misinformation. Nor does Bonney identify any piece of information on the plea questionnaire or in the court's colloquy that he actually misunderstood.

Bonney also asserts that counsel told him, if he did not enter a plea, the State would add more charges. This assertion is supported by a portion of the plea agreement, in which the State agreed not to bring additional charges stemming from prior assaults against the same victim. There is, however, nothing improper about the State's using additional alleged criminal conduct by Bonney as leverage in the plea negotiation, and it was counsel's obligation to relay the State's position to Bonney.

Next, the facts set forth in the complaint provided a sufficient factual basis for the plea. Those facts included the victim's statements to both an adoption case worker and the police that Bonney had forced her to have sex with him, as well as DNA testing confirming that Bonney was the biological father of the victim's child. Bonney now complains that the victim and her mother "keep changing their stories after talking to social workers." He further asserts that, due to an injured shoulder and bad back, he could not have held the victim down by force as she told police, and that neighbors would have heard if the victim had screamed during the assault as she claimed. We note that the use of force was not an element of the charged offense. What made this first-degree sexual assault was the victim's impregnation—a fact that Bonney does not dispute. *See* WIS. STAT. 940.225(1)(a). In any event, by entering his plea, Bonney waived his right to challenge at trial any inconsistencies in the victim's account, and the circuit court could properly rely upon the victim's account as set forth in the complaint.

We conclude that the circuit court's colloquy, in conjunction with the plea questionnaire and complaint, was sufficient to satisfy the court's obligations under WIS. STAT. § 971.08, and

that none of the facts alleged by Bonney constitute a manifest injustice that would otherwise warrant plea withdrawal. *See generally* ***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).

A challenge to Bonney's sentence would also lack arguable merit. We agree with counsel's thorough discussion as to why the sentence was both legal and supported by a proper exercise of discretion by the circuit court.

Bonney now contends that there were mistakes in the PSI, but does not explicitly identify the alleged errors. It is possible he is once again referring to portions of the victim's account with which he disagrees. However, the fact that certain information is disputed does not make it false. Bonney provides no basis to believe that the PSI author did not accurately report what the victim or anyone else said in interviews.

Along the same lines, Bonney faults counsel for failing to present Dr. Jerry Roherty as a witness at the sentencing hearing. Roherty conducted an independent psychological evaluation of Bonney and prepared a report that was submitted to the circuit court prior to sentencing. Bonney asserts that Roherty "didn't see it as forced or rape." That assertion appears to be a mischaracterization of Roherty's report. What Roherty actually said was that Bonney's own description of the offense as merely "2 adults (that) made a mistake" was an example of Bonney's lack of "sufficient understanding of the criminality or appropriateness of his sexual relationship with the victim." Roherty also noted it was "suggested" that the relationship may have become consensual over time, and theorized that, perhaps as a result of the victim's own intellectual deficits, fears of being in trouble herself, or external family pressure, "it was initially

unclear to the investigators" whether the victim believed she had been raped. In any event, even if Roherty did hold an opinion that Bonney had not used force during the assault, we do not see what Roherty's presence at the hearing would have accomplished that his report did not. As we have already noted, the circuit court was entitled to accept the victim's account of the assault.

Any additional arguments raised in Bonney's responses are rejected, but do not merit individual discussion. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. Upon an independent review of the record, we have found no other arguable basis for reversing the judgment 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 judgment of conviction is modified to a charge of first-degree sexual assault causing pregnancy and, as modified, summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Assistant State Public Defender Ellen Krahn is relieved of any further representation of William Bonney 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