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 II

April 24, 2019

To:

Hon. Angela W. Sutkiewicz
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

Joel Urmanski
District Attorney
615 N. 6th St.
Sheboygan, WI 53081

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Mark A. Schoenfeldt
Law Firm of Mark Schoenfeldt
230 W. Wells St., Ste. 706
Milwaukee, WI 53203

Danny R. Schultz, #130421
New Lisbon Correctional Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2018AP1944-CRNM State of Wisconsin v. Danny R. Schultz (L.C. # 2016CF32)

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).

Danny R. Schultz appeals from a judgment convicting him of third-degree sexual assault and exposing genitals to a child. Appointed counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Schultz filed a

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

response; counsel filed a supplemental report. Our review of the no-merit reports, the response, and the record satisfy us that this case is appropriate for summary disposition, *see* WIS. STAT. RULE 809.21, and that there is no arguable merit to any issue that could be raised on appeal.

Schultz, then in his upper forties, was accused of repeated first-degree sexual assault of MB, the great-nephew of the couple with whom Schultz resided. The assaults occurred over about three years when MB was twelve to fifteen years old. Schultz entered no-contest pleas to one count each of third-degree sexual assault and exposing genitals to a child. The circuit court sentenced Schultz to a total of six and one-half years' initial confinement and seven years' extended supervision. This no-merit appeal followed.

The no-merit report considers whether Schultz's no-contest pleas were knowing, voluntary, and intelligent and whether his sentence was a result of an erroneous exercise of discretion or was otherwise illegal. As our review of the record satisfies us that the no-merit report appropriately analyzes these issues and properly concludes that they are wholly without merit, we address them no further.

The no-merit report separately considers whether there was a sufficient factual basis for Schultz's pleas.[2] A sufficient factual basis is part of the court's plea-taking duties. WIS. STAT. § 971.08(1)(b) ("Before the court accepts a plea of guilty or no contest, it shall … [m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged.").

[2] Counsel sets forth the standard of review for sufficiency of the evidence after a jury trial. That is not at issue after a defendant enters a no-contest plea.

The plea hearing and plea questionnaire/waiver of rights form demonstrate that there was a sufficient factual basis for Schultz's no-contest pleas. Before entering the pleas, he marked each applicable paragraph of the plea questionnaire. He also marked his understanding that by entering no-contest pleas he would forfeit his right to require the State to prove him guilty beyond a reasonable doubt on each element of the offenses of third-degree sexual assault and exposing genitals to a child. He confirmed to the court that he reviewed with counsel and understood the elements of the offenses, which were attached to the plea questionnaire.

The complaint charged Schultz with repeated sexual assault of a child and alleged that at least three of the assaults were violations of WIS. STAT. § 948.02(1) or (2), contrary to WIS. STAT. § 948.025(1)(e). The complaint alleged that Schultz and MB began sharing a bedroom when MB's former room was needed by someone his aunt and uncle were helping out, that MB reported to his uncle that Schultz began giving him beer and cigarettes and playing pornographic videos and that the activity escalated to Schultz giving him "hand jobs" and "blow jobs," and that he gave Schultz a hand job once. Schultz's counsel agreed to the circuit court's use of the facts in the complaint as a factual basis for the pleas. Pursuing the issue of an insufficient factual basis for the convictions lacks arguable merit.

Schultz raises several claims in his response to the no-merit report. He contends that MB's allegations were lies; that he is innocent of the charges to which he pled; that his attorney failed to tell him about the charge of exposing genitals to a child; and that he entered his no-contest pleas because his attorney told him he likely would receive only probation and he also was under the duress of an unspecified medical condition. The record shows otherwise.

The transcript of the plea hearing shows that Schultz: was advised that the court was not required to follow the plea agreement and could impose the maximum penalty; agreed that he was not promised anything, threatened, or pressured in any way to enter his plea; told the court that he took only blood pressure medication, aspirin, and pain medication, none of which affected his ability to understand the proceedings; confirmed to the court that he was clear-headed and felt capable of making good decisions; entered no-contest pleas to both charges; and understood he would be required to register as a sex offender.

As counsel correctly notes, Schultz's valid no-contest pleas waive all nonjurisdictional defenses to his conviction, including constitutional violations. ***State v. Milanes***, 2006 WI App 259, ¶13, 297 Wis. 2d 684, 727 N.W.2d 94. Accordingly, Schultz's claim of innocence or that MB lacks credibility does not establish the existence of an issue of any appealable merit. Our review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved from further representing Schultz 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