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**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 III/IV**

June 27, 2019

*To*:

Hon. James M. Peterson
Circuit Court Judge
615 Stokke Pkwy.
Menomonie, WI 54751

Andrea Amidon Nodolf
District Attorney
615 Stokke Parkway, #1700
Menomonie, WI 54751-2700

Katie Schalley
Clerk of Circuit Court
Dunn County Judicial Center
615 Stokke Parkway, Suite 1500
Menomonie, WI 54751

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

Frederick A. Bechtold
Attorney At Law, LLC
490 Colby St.
Taylors Falls, MN 55084

Christopher J. Novotney 648536
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:

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2018AP248-CRNM State v. Christopher J. Novotney (L.C. # 2016CF63)

Before Lundsten, P.J., Blanchard 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).**

Christopher Novotney appeals a judgment convicting him, after the entry of pleas of no contest, of two counts of repeated sexual assault of the same child and one count of exposing a child to harmful materials. Attorney Frederick Bechtold has filed a no-merit report seeking to

withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2017-18);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v. Wisconsin Ct. App.***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the pleas and sentences. Novotney was sent a copy of the report, and has filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

Novotney entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Novotney's pleas, the State agreed to read in and dismiss ten other counts from the amended information. The parties agreed that they were free to argue as to sentencing.

Novotney provided the circuit court with a plea questionnaire that he signed on September 1, 2016. Novotney asserts in his response to the no-merit report, "I gave up on everything and when a plea came I was so mentally exhausted I just signed the papers not really knowing the consequences." This conclusory assertion does not support an arguably meritorious claim for plea withdrawal. Further, the record from the subsequent plea colloquy reflects that the court reviewed the plea questionnaire with Novotney and ascertained that Novotney did in fact understand the questionnaire and had gone over it with his counsel.

In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing

[1] All further references in this order to the Wisconsin Statutes are to the 2017-18 version, unless otherwise noted.

plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

The circuit court conducted a standard plea colloquy, inquiring into Novotney's ability to understand the proceedings and the voluntariness of his plea decisions, 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. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure that Novotney understood that it would not be bound by any sentencing recommendations.

The defense stipulated that the criminal complaint provided a sufficient factual basis for the pleas. Novotney indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Novotney has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas are valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Novotney's sentences also would lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The record shows that Novotney was afforded an opportunity to comment on the Presentence Investigation Report and to address the court, both personally and through counsel. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court considered the seriousness of the offenses, Novotney's character, his lack of a criminal history, his rehabilitative needs, and the need to protect the public. The court concluded that a lengthy prison sentence was necessary to get Novotney the treatment he needed and also to protect the public.

The court then sentenced Novotney to twelve years and six months of initial confinement followed by seven years and six months of extended supervision on each of the two counts of repeated sexual assault of the same child, to be served consecutively. On the count of exposing a child to harmful materials, the court withheld sentence and placed Novotney on probation for thirty-six months, consecutive to his other sentences. The bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 948.025(1)(e) (2015-16) (classifying repeated first- or second-degree sexual assault of the same child as a Class C felony); 948.11(2)(a) (2015-16) (classifying exposing a child to harmful materials as a Class I felony); 973.01(2)(b)3. and (d)2. (2015-16) (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)9. and (d)6. (2015-16) (providing maximum terms of one and one-half years of initial confinement and two years of extended supervision for a Class I felony). The court also ordered that Novotney register as a sex offender. There is a presumption that a sentence "'well within the limits of the maximum sentence'" is not unduly harsh, and the sentences imposed here were not "'so excessive and unusual and so disproportionate to the offense[s] committed as to shock public

sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. 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 summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Frederick Bechtold is relieved of any further representation of Christopher Novotney in this matter pursuant to WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*
*Clerk of Court of Appeals*