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**DISTRICT I**

August 19, 2019

To:

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

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2019AP93-CRNM      State of Wisconsin v. Raymond Earl Hogan (L.C. # 2017CF438)

Before Brash, P.J., Kessler and Brennan, 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).**

Raymond Earl Hogan appeals from a judgment, entered upon his guilty plea, convicting him on one count of second-degree sexual assault of a child. Appellate counsel, Pamela Moorshead, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967),

and WIS. STAT. RULE 809.32 (2017-18).<sup>1</sup> Hogan was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and counsel's report, we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

A concerned teacher asked then-twelve-year-old J.M. about her repeated absences from school. J.M. disclosed to her teacher that Hogan, whom J.M. described as her stepfather, had been touching her since she was three, but she was concerned about how that would affect her mother and she did not want to be the one to break up the family. The teacher reported this information, and the State charged Hogan with one count of repeated sexual assault of a child, contrary to WIS. STAT. § 948.025(1)(e).

Hogan agreed to resolve the case through a guilty plea to an amended charge of second-degree sexual assault of a child under the age of sixteen, contrary to WIS. STAT. § 948.02(2). In exchange, the State would recommend a sentence that consisted of ten years' initial confinement while standing silent on the length of any extended supervision. The circuit court conducted a plea colloquy with Hogan, after which it accepted his guilty plea. Later, the circuit court sentenced Hogan to ten years of initial confinement and eight years of extended supervision.

The first potential issue counsel discusses is whether Hogan could challenge his plea as not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire and waiver of rights form, addendum, and attached jury instructions—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

§ 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and subsequent cases, as collected in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.<sup>2</sup> We thus agree with counsel’s assessment in the no-merit report that any claim that Hogan did not knowingly, voluntarily, and intelligently enter his pleas would lack arguable merit.<sup>3</sup>

The other issue counsel discusses is whether this court should remand the matters for resentencing because the circuit court erroneously exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider a variety of additional factors. *See State v. Odom*,

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<sup>2</sup> We observe that the amended information listing the amended charge alleged that Hogan had sexual intercourse with J.M., but the definitional jury instruction attached to the plea questionnaire, WIS JI—CRIMINAL 2101A, explained the definition of sexual contact instead. During the colloquy, however, the circuit court confirmed that Hogan understood he was alleged to have had sexual intercourse with J.M., and the circuit court also reviewed the definition of sexual intercourse with Hogan during the colloquy. Hogan acknowledged his understanding of both points.

<sup>3</sup> Counsel also expressly discusses, as a separate issue, whether a factual basis existed for Hogan’s guilty plea. This is part of the circuit court’s duties during a plea colloquy. *See* WIS. STAT. § 971.08(1)(b); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court asked Hogan whether the facts in the complaint were substantially true, and he agreed. We observe that the complaint alleges at least two examples of sexual intercourse, so we agree with counsel’s assessment that any claim that there was no factual basis for the plea would lack arguable merit.

2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See id.*

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The eighteen-year sentence imposed is well within the forty-year range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel's ultimate conclusion that there is no arguable merit to the court's sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of further representation of Hogan in this matter. *See* 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*