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DISTRICT III

November 26, 2019

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

2018AP913-CRNM State of Wisconsin v. Justin M. Feldkamp
(L. C. No. 2016CF1069)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Justin Feldkamp has filed a no-merit report, concluding there is no basis to challenge Feldkamp's conviction for ten counts of possession of child pornography. Feldkamp was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no merit

to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).¹

A criminal complaint charged Feldkamp with twenty-nine counts of possession of child pornography, each as a repeater. After Feldkamp had been taken into custody on unrelated matters, his mother was cleaning out his apartment in Appleton when she located a computer tablet. She later used the tablet and located disturbing images that she believed were child pornography. She took the tablet to police. Feldkamp was interviewed and admitted to police that he looked at child pornography on his tablet, including images of girls aged eleven to fourteen. Feldkamp estimated that his tablet contained approximately 190 child pornographic images. An amended complaint added a paragraph describing prior convictions for second-degree sexual assault of a child and child enticement, which supported the basis for the repeater enhancers under WIS. STAT. § 939.62(1)(c).

A plea agreement was reached whereby Feldkamp entered a no-contest plea to the first ten counts, with the repeater enhancements, in exchange for the State's recommendation that the remaining counts be dismissed and read-in. The circuit court imposed a sentence consisting of five years' initial confinement and five years' extended supervision on each count (counts one through five concurrent to each other and any existing sentence, and counts six through ten concurrent to each other but consecutive to counts one through five).

The no-merit report addresses potential issues regarding whether Feldkamp's pleas were knowingly, intelligently, and voluntarily entered, and whether the circuit court properly

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

exercised its sentencing discretion. Upon our independent review of the record, we agree with counsel’s description, analysis, and conclusion that any challenge to these issues would lack arguable merit, and we will not further address them.²

Our independent review of the record discloses a potential issue regarding a police search of the tablet, which located approximately 190 images of child pornography in the “downloads” folder of the tablet. The record on appeal does not reveal whether the police search was obtained pursuant to a search warrant. However, any challenge to the judgment of conviction based upon a possible warrantless search of the tablet by police would lack arguable merit. Feldkamp pled no contest to the ten charges for which he was convicted, thereby waiving his right to challenge any possible constitutional challenge to any warrantless search of his tablet. *See State v. Bangert*, 131 Wis. 2d 246, 293, 389 N.W.2d 12 (1986). Further, any claim for ineffective assistance of counsel for failure to seek suppression of the evidence obtained through a warrantless search of the tablet would provide no different result. Even if the results of the computer search were suppressed due to a warrantless search, there is still sufficient evidence in the record to support the conviction by virtue of Feldkamp’s mother’s prior contact with police—where she turned over the tablet and stated that while using the tablet she had located disturbing images of child pornography—as well as Feldkamp’s admission that he viewed child pornography on the tablet and it contained approximately 190 child pornographic photographs of girls aged eleven to fourteen years old.

² We note the COMPAS risk assessment was mentioned at sentencing, but the record shows it was not “determinative” of the sentences imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Timothy O'Connell is relieved of further representing Justin Feldkamp in this matter. *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