



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

May 13, 2020

To:

Hon. Barbara H. Key
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Christian A. Gossett
District Attorney
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Adam R. Barthelemy, 671761
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

Erica L. Bauer
Bauer Law, LLC
1835 E. Edgewood Dr., Ste. 105 #303
Appleton, WI 54913

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

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

2019AP1802-CRNM State of Wisconsin v. Adam R. Barthelemy (L.C. #2017CF544)

Before Neubauer, C.J., Gundrum and Davis, 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).

Adam R. Barthelemy appeals from a judgment convicting him of trafficking of a child, threats to injure or accuse, and causing a child to view sexual activity. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*,

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

386 U.S. 738 (1967). Barthelemy filed a response. After reviewing the record, counsel's report, and Barthelemy's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Barthelemy was convicted following no contest pleas to trafficking of a child, threats to injure or accuse, and causing a child to view sexual activity. The charges stemmed from a series of text messages that he sent to a fourteen-year-old girl, soliciting her for sex, threatening to reveal nude photographs of her if she ignored him, and showing pictures of a penis. For his actions, the circuit court imposed an aggregate sentence of eight years of initial confinement and ten years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Barthelemy's no contest pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Barthelemy that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that a challenge to the entry of Barthelemy's no contest pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court considered the seriousness of the offenses, Barthelemy's character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Barthelemy's

arrest for similar behavior in another county,² the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Barthelemy’s sentence would lack arguable merit.

As noted, Barthelemy filed a response to the no-merit report. In it, he questions the reasonableness of his sentence, which we have already discussed. He also expresses remorse for his actions. Although Barthelemy’s words are encouraging, we are not persuaded that they present an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Erica L. Bauer of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

² See Outagamie County case No. 2017CF640. Barthelemy eventually pled no contest to child enticement in that case.

³ Any other possible appellate issues from the proceedings before entry of the pleas are forfeited because Barthelemy’s no contest pleas forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. See *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of further representation of Barthelemy in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals