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**DISTRICT IV**

October 29, 2020

To:

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

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2019AP1978-CRNM      State of Wisconsin v. Mark E. Bartz (L.C. # 2018CF20)

Before Fitzpatrick, P.J., Blanchard, and Nashold, 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).**

Attorney Melissa Petersen, appointed counsel for Mark E. Bartz, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18); *Anders v. California*, 386 U.S. 738, 744 (1967).<sup>1</sup> The no-merit report addresses whether there would be

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

arguable merit to a challenge to Bartz's plea or sentencing. Bartz was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Bartz was charged with repeated sexual assault of the same child. Pursuant to a plea agreement, Bartz pled guilty, and the parties jointly recommended a sentence of twenty-five years of initial confinement and twenty years of extended supervision, concurrent to Bartz's fifty-year federal sentence based on related conduct. The court sentenced Bartz to forty years of initial confinement and twenty years of extended supervision, concurrent to his federal sentence.

The no-merit report addresses whether there would be arguable merit to a challenge to Bartz's plea. We agree with counsel's assessment that this issue would lack arguable merit. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary, *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906, or the ineffective assistance of counsel, *State v. Bentley*, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996). Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Bartz signed, satisfied the court's mandatory duties to personally address Bartz and determine information such as Bartz's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel that a challenge to Bartz's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Bartz's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Bartz's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Bartz faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (quoted source omitted)). We discern no other basis to challenge the sentence imposed by the circuit court.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Melissa Petersen is relieved of any further representation of Mark Bartz 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*