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DISTRICT II

February 10, 2021

To:

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

2018AP2247-CRNM State of Wisconsin v. Todd M. Valiquette (L.C. #2013CF1219)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

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).

Todd M. Valiquette appeals from a judgment convicting him of (1) delivery of a scheduled non-narcotic drug to a minor, (2) second-degree sexual assault of a child, and (3) causing a child to view or listen to sexual activity. His appellate counsel filed a no-merit report

pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Valiquette filed a response. After reviewing the record, counsel's report, and Valiquette'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.

Valiquette was convicted following no contest pleas to (1) delivery of a scheduled non-narcotic drug to a minor, (2) second-degree sexual assault of a child, and (3) causing a child to view or listen to sexual activity. He was accused of providing alcohol, cigarettes, and prescription pills to two underage females in exchange for sexual favors. Numerous additional charges were dismissed and read in.²

On the first count, the circuit court imposed and stayed a sentence of three years of initial confinement and two years of extended supervision, ordering a three-year term of probation. On the second and third counts, the court imposed an aggregate sentence of twenty years of initial confinement and fifteen years of extended supervision.

The no-merit report addresses potential issues of whether Valiquette's plea was validly entered, whether the circuit court properly exercised its discretion at sentencing, whether the circuit court judge was biased, and whether Valiquette could assert a defense based upon his low

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

² The dismissed and read-in charges were for two counts of delivery of a scheduled drug to a minor, four counts of contributing to the delinquency of a child, one count of causing a child to view or listen to sexual activity, two counts of possessing an illegally obtained prescription drug, two counts of child enticement, two counts of soliciting a child for prostitution, and one count of second-degree sexual assault of a child.

blood sugar. This court is satisfied that the no-merit report correctly analyzes these issues as without merit.

As noted, Valiquette filed a response, which is rambling and difficult to follow. In it, he references some of the issues addressed by the no-merit report, which we will not discuss further. He also appears to fault his trial counsel for (1) failing to ask for a different judge, (2) failing to communicate an earlier plea offer from the State, and (3) forcing him to take the plea deal that he did. Likewise, he appears to accuse the circuit court of relying upon inaccurate information. We are not persuaded that Valiquette's response presents an issue of arguable merit.

First, a claim of ineffective assistance of counsel for failing to seek or obtain substitution of the circuit court judge cannot succeed without some demonstration that the assigned judge was partial or fundamentally unfair. *See State v. Damaske*, 212 Wis. 2d 169, 198-99, 567 N.W.2d 905 (Ct. App. 1997). We find nothing in the record to substantiate such a claim.³

Second, the earlier plea offer that Valiquette describes is objectively worse than the one he agreed to take.⁴ Thus, even if trial counsel did fail to communicate the earlier offer to him, Valiquette suffered no prejudice as a result.

Third, any assertion that Valiquette was forced to take the plea deal that he did is belied by the record. At the plea hearing, Valiquette assured the circuit court that no one had threatened

³ Valiquette notes that the circuit court judge was previously disciplined in another matter. He fails to show how that discipline is relevant to his case.

⁴ According to Valiquette, the earlier plea deal had the State asking that he serve twelve to fourteen years of initial confinement or whatever time the presentence report recommended (which was ultimately nine to ten years). The deal that he accepted had the State asking that he serve eight to ten years.

him or promised him anything to get him to plead to the offenses. He cannot take an inconsistent position now. See *State v. Michels*, 141 Wis. 2d 81, 97-98, 414 N.W.2d 311 (Ct. App. 1987).

Finally, there is no indication that the circuit court relied upon inaccurate information.

This claim is based upon the following statement by the court at sentencing:

And my problem with it is I don't know if there's a cure for [interest in having sex with a young person] to be honest with you. If that's what turns you on, then that's what turns you on. If adult women don't sexually excite you, but 12- and 13-year-olds [do]— and that was the pattern.

Valiquette disputes that adult women do not excite him, citing his former girlfriends as evidence. However, the court's point in making the above statement was that, regardless of Valiquette's dating history, he evinced a clear sexual interest in underage females, which posed a danger to the public. This was apparent in the presentence report,⁵ which the court properly relied upon.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Valiquette further in this appeal.

Upon the foregoing reasons,

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

⁵ In the presentence report, Valiquette admitted an attraction to younger females and acknowledged that he had previously chatted online with several for sexual purposes. One of these chats resulted in his questioning by police. Another one, which was accompanied with an attempt to meet the female at a park, resulted in an arrest for child enticement.

IT IS FURTHER ORDERED that Attorney Urszula Tempska is relieved of further representation of Todd M. Valiquette in this appeal. *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