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DISTRICT IV

May 13, 2021

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

2018AP1925-CRNM State of Wisconsin v. Scott A. Knuuttila (L.C. # 2015CF340)

Before Fitzpatrick, P.J., Graham, 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).

Appointed counsel for Scott Knuuttila filed a no-merit report concluding no grounds exist to challenge Knuuttila's conviction for first-degree sexual assault by sexual contact with a child under the age of thirteen, contrary to WIS. STAT. § 948.02(1)(b) (2011-12).[1] Knuuttila filed a

[1] Further references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

response challenging the effectiveness of his trial counsel. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Knuuttila with first-degree sexual assault of a child under age twelve, by sexual intercourse—a charge that carried a mandatory minimum sentence of twenty-five years' initial confinement. *See* WIS. STAT. § 939.616(1r) (2011-12). The complaint alleged that on or about May 17, 2013, while on a trip with a friend's then nine- and ten-year-old daughters, Knuuttila shared a bed with the nine-year-old. The complaint further alleged that Knuuttila put his hand down the child's pants and put his finger in her anus. The child initially told only her sister about Knuuttila's actions, but the child ultimately reported the assault to her mother in November 2014. When questioned by police, Knuuttila admitted rubbing the child's "backside," which Knuuttila clarified meant "butt."

Plea negotiations began with a prosecutor who left for new employment during the pendency of Knuuttila's case. Knuuttila moved to enforce that prosecutor's plea offer and, after a hearing, the motion was denied. Pursuant to a plea agreement with the new prosecutor, Knuuttila entered a no-contest plea to an amended charge of first-degree sexual assault of a child by sexual contact, which did not include the mandatory minimum sentence of the original charge. The parties remained free to argue at sentencing. Out of a maximum possible sixty-year sentence, the circuit court imposed thirty years, consisting of twenty years' initial confinement followed by ten years' extended supervision, consecutive to any other sentence Knuuttila was then serving.

The no-merit report addresses whether the circuit court erred by denying Knuuttila's motion to enforce the earlier plea offer; whether Knuuttila knowingly, intelligently, and voluntarily entered his no-contest plea; whether the circuit court properly exercised its sentencing discretion; and whether there are any new factors justifying a motion for sentence modification. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that none of these issues has arguable merit.

In his response to the no-merit report, Knuuttila challenges the effectiveness of trial counsel. To establish ineffective assistance of counsel, Knuuttila must show that counsel's performance was not within the range of competence demanded of attorneys in criminal cases and that the deficient performance resulted in prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove prejudice, Knuuttila must demonstrate "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty [or no contest] and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

Knuuttila claims that counsel failed to ensure he knew the elements of the crime or what the State would have to prove at trial. Knuuttila also claims he "did not even know what the plea deal was." The record belies his claims. At the plea hearing, Knuuttila acknowledged that he signed the plea questionnaire and waiver of rights form and that he and defense counsel went

through the form "line by line."[2] The circuit court's plea colloquy explained in detail the elements of the offense and informed Knuuttila what the State would have to prove beyond a reasonable doubt. As properly addressed by the no-merit report, the record shows that Knuuttila's no-contest plea was knowingly, voluntarily, and intelligently made.

Knuuttila also claims trial counsel failed to pursue a defense that the victim's mother was motivated "to have her daughter accuse" him "of these actions." A valid guilty or no-contest plea, however, waives all non-jurisdictional defects and defenses. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Moreover, Knuuttila acknowledged at the plea hearing that he had enough time to thoroughly discuss his case, his plea decision, possible consequences, and possible defenses with his attorney.

Additionally, Knuuttila asserts that trial counsel was ineffective by failing to file a motion to suppress Knuuttila's statements to police. The record, however, includes a statement by defense counsel recounting that he *reviewed* Knuuttila's recorded interviews with the police; that Knuuttila was given ***Miranda***[3] warnings prior to the interviews; that Knuuttila was "not subject to duress or force"; and that the statements "appear to be voluntary." Counsel further noted that

[2] Although the circuit court referred to the plea questionnaire and waiver of rights form, and Knuuttila confirmed signing the form, the form itself was not included in the record on appeal. After this court ordered the record supplemented with the form, appellate counsel informed this court that the form could not be located by counsel or Knuuttila. In her correspondence, counsel properly noted that a plea questionnaire form is not mandatory and is not a substitute for a substantive, in-court plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶31, 317 Wis. 2d 161, 765 N.W.2d 794; *see also* ***State v. Brandt***, 226 Wis. 2d 610, 621, 594 N.W.2d 759 (1999). Ultimately, the absence of the plea form from the appellate record does not provide grounds for a nonfrivolous challenge to Knuuttila's plea.

[3] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

he watched the recorded interviews with Knuuttila and informed Knuuttila of his opinion that there was no basis to file a motion to suppress his statements.

We note that the video recording of the first interview does not reflect that ***Miranda*** warnings were given to Knuuttila before he spoke to a police detective. During that interview, which appeared to take place at the detective's desk, rather than in an interrogation room, the detective repeatedly informed Knuuttila that he was not under arrest and that he could leave at any time. Nothing about this initial interview would support a nonfrivolous argument that trial counsel was ineffective by failing to move to suppress any statements made during that interview. *See* ***State v. Brockdorf***, 2006 WI 76, ¶39, 291 Wis. 2d 635, 717 N.W.2d 657 (holding that police are not required to give ***Miranda*** warnings if the suspect is not in custody). Moreover, the inculpatory statements referenced in the criminal complaint occurred at the second interview. At the outset of the second interview, Knuuttila was in custody; the detective read Knuuttila his ***Miranda*** rights; and Knuuttila waived those rights. Ultimately, the record supports trial counsel's assessment that there was no basis to pursue a suppression motion. That Knuuttila disagrees with counsel's assessment does not support a nonfrivolous challenge to the effectiveness of trial counsel. Our review of the record and the no-merit report discloses no basis for challenging trial counsel's performance and no grounds for counsel to request a ***Machner***[4] hearing.

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

Therefore,

[4] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

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

IT IS FURTHER ORDERED that attorney Susan E. Alesia is relieved of her obligation to further represent Scott Knuuttila 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