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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 I

June 8, 2021

To:

Hon. David L. Borowski
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Christopher P. August
Assistant State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202-4116

John D. Flynn
Assistant District Attorney
District Attorney's Office
821 W. State. St. - Ste. 405
Milwaukee, WI 53233

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

Demetris Leonardo Vance
5130 W. Congress St.
Milwaukee, WI 53218-5719

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

2020AP1506-CRNM State of Wisconsin v. Demetris Leonardo Vance
(L.C. # 2017CF1521)

Before Brash, P.J., Dugan and White, 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).

Demetris Leonardo Vance appeals from a judgment of conviction, following a guilty plea, of causing a child to expose her genitals. *See* WIS. STAT. § 948.10(1)(a) (2019-20).[1] His

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

appellate counsel, Christopher P. August, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Vance received a copy of the report, was advised of his right to file a response, and did not do so. We have independently reviewed the record and the no-merit report as mandated by ***Anders***. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

Vance was originally charged with second-degree sexual assault of a child under the age of sixteen as a party to the crime. According to the criminal complaint, on March 14, 2017, Vance and his co-defendant simultaneously engaged in penis-to-mouth and penis-to-vagina intercourse with a fifteen-year-old. The victim identified Vance in a photo array.

The matter was ultimately resolved with a plea agreement, whereby Vance agreed to plead guilty to a reduced charge of causing a child to expose her genitals. The State disclosed its reasons for amending the charge, among them, Vance's agreement to cooperate in the State's prosecution of his co-defendant. As a part of the agreement, both parties would be free to argue for any appropriate disposition, the State would not recommend sex offender registration, and would stand silent with respect to Vance's motion to be released on bail pending sentencing. The circuit court conducted a plea colloquy, accepted Vance's guilty plea, and found him guilty.

The circuit court sentenced Vance to the maximum sentence, eighteen months of initial confinement followed by two years of extended supervision. The court also imposed a $1,000 fine and required Vance to register as a sex offender.

The no-merit report addresses the potential issues of whether Vance's plea was valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquy, together with the plea questionnaire and waiver of rights form,[2] the addendum, and the applicable jury instruction (which was initialed by Vance), demonstrates Vance's understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).[3] Additionally, the record reveals that the circuit court considered and applied the relevant sentencing factors. This court is satisfied that the no-merit report properly concludes that the issues it raises are without merit and will not discuss them further.

Our independent review of the record, however, prompts us to address one other matter that the no-merit report does not discuss. Although the complaint properly identified the initial charge and the penalties that Vance initially faced, the court commissioner did not personally

[2] The plea questionnaire and waiver of rights form shows that Vance crossed out "No Contest" under the "Plea" column, marked "Guilty," and initialed the change. The circuit court addressed this during the plea colloquy and confirmed that Vance intended to mark "Guilty."

[3] Prior to the sentencing hearing, the State, through a new prosecutor, moved to revoke the plea, stating that because the prosecutor who had negotiated the agreement was no longer with the State, it was unclear what information she had been led to believe Vance would provide. Although the notes the new prosecutor inherited seemed to suggest that Vance would provide a detailed statement against his co-defendant, counsel for Vance claimed that Vance only promised to place the victim and the co-defendant in the residence at the same time. The circuit court adjourned the matter for the parties to "figure out how they want to proceed." Ultimately, the State indicated that it would not seek to revoke Vance's plea and would proceed with the negotiated agreement. Had the plea offer been revoked, the State would have been free to charge Vance with the original charge—second-degree sexual assault of a child under the age of sixteen, a Class C felony carrying a potential imprisonment term of forty years and a potential fine of $100,000. *See* WIS. STAT. §§ 948.02(2), 939.50(3)(c), 939.05. Vance was ultimately convicted of a Class I felony and sentenced to the maximum term of three and a half years and the circuit court imposed a fine of $1000. *See* WIS. STAT. §§ 948.10(1)(a), 939.50(3)(i). We conclude that there would be no arguable merit to a potential challenge to this issue.

inform him of those penalties at his initial appearance. *See* WIS. STAT. § 970.02(1)(a); *see also* ***State v. Thompson***, 2012 WI 90, ¶62, 342 Wis. 2d 674, 818 N.W.2d 904 (setting forth a judge's mandatory duties under § 970.02(1)(a), including: "In the case of a felony, the judge *shall* personally inform the defendant of the penalties for the felony or felonies with which the defendant is charged." (emphasis in ***Thompson***)). Instead, the commissioner asked defense counsel if he "[w]ent over [Vance's] rights and penalties?" Defense counsel responded affirmatively, and there is no indication in the record that Vance could make the requisite showing of prejudice. *See* ***id.***, ¶11 ("The prejudice determination [in this scenario] must satisfy the traditional standard for overcoming harmless error, that is, there must be a reasonable probability that the error contributed to the outcome of the action or the proceeding at issue."). In any event, entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. Consequently, there would be no arguable merit to a challenge on this basis.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved of further representation of Vance 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