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DISTRICT II

July 28, 2021

To:

Hon. Rebecca L. Persick
Circuit Court Judge
Electronic Notice

Melody Lorge
Clerk of Circuit Court
Electronic Notice

Timothy T. O'Connell
Electronic Notice

Joel Urmanski
District Attorney
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Harlen R. Voechting, #679023
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2020AP133-CRNM State of Wisconsin v. Harlen R. Voechting (L.C. #2018CF185)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, excep. t for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Harlen R. Voechting appeals from judgments convicting him of second-degree sexual assault of a child contrary to WIS. STAT. § 948.02(2) (2017-18)[1] and possessing child pornography contrary to WIS. STAT. § 948.12(1m). Voechting's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and ***Anders v. California***, 386 U.S. 738 (1967). Voechting received a copy of the report and was advised of his right to file a

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21 (2019-20).

The no-merit report addresses the following possible appellate issues: (1) whether Voechting's no contest pleas were knowingly, voluntarily, and intelligently entered; and (2) whether the circuit court misused its sentencing discretion. After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit.

For the child pornography conviction, the circuit court sentenced Voechting to sixteen years (six years of initial confinement and ten years of extended supervision). For the second-degree sexual assault conviction, the circuit court imposed a consecutive probation term of ten years. Voechting received the sentence credit he requested.

During the plea colloquy, the circuit court confirmed that Voechting signed and reviewed the plea questionnaire with his counsel, he understood its contents, and counsel had reviewed with him the elements of the offenses as set out in the attached jury instructions and the maximum penalties. However, the court did not review either the specific elements of the offenses or the maximum penalties with Voechting.[2] The court confirmed that Voechting had adequate time to consult with counsel about entering his pleas. Counsel confirmed that

[2] Unusually, the circuit court neither required counsel to state the plea agreement on the record nor directed Voechting's attention to the plea agreement set out in the plea questionnaire.

Voechting was entering knowing, intelligent, and voluntary pleas and that the complaint provided a factual basis for the pleas. In his no-merit report, appellate counsel advises that after conferring with Voechting, "it is counsel's understanding that it could not be argued in good faith that [Voechting] did not understand" the information to be provided during a plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794 (circuit court's mandatory duties at the plea colloquy).[3]

Based on the foregoing, we conclude that the plea colloquy was not defective. *See* ***State v. Pegeese***, 2019 WI 60, ¶¶37, 40-41, 387 Wis. 2d 119, 928 N.W.2d 590 (similar colloquy regarding the constitutional rights waived by a plea deemed adequate). Appellate counsel's statement that Voechting could not allege in good faith that he did not understand information that should have been provided at the plea hearing further supports our conclusion that an appellate challenge to the entry of the no contest pleas would lack arguable merit. Finally, Voechting's no contest pleas waived "all nonjurisdictional defects and defenses." ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Any challenge to the entry of Voechting's no contest pleas would lack arguable merit for appeal.

The circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); ***State v. Ziegler***, 2006 WI App 49, ¶23,

[3] A defendant seeking to withdraw a plea must "make a prima facie showing" of a defect in the plea colloquy and "allege that the defendant did not know or understand the information that should have been provided at the plea hearing." ***State v. Brown***, 2006 WI 100, ¶39, 293 Wis. 2d 594, 716 N.W.2d 906. Appellate counsel's no-merit report advises that Voechting could not make the allegations required in a plea withdrawal motion.

289 Wis. 2d 594, 712 N.W.2d 76 (sentencing objectives and factors discussed). There would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably meritorious issue for appeal. 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, affirm the judgments of conviction and relieve Attorney Timothy T. O'Connell of further representation of Voechting in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2019-20) .

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved of further representation of Harlen R. Voechting in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals