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DISTRICT I

February 1, 2022

To:

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

2020AP972-CRNM State of Wisconsin v. Javonte T. Jackson (L.C. # 2017CF5697)

Before Brash, C.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).

Javonte T. Jackson appeals from a judgment convicting him of first-degree sexual assault of a child (sexual contact with a person under the age of thirteen). *See* WIS. STAT. § 948.02(1)(e) (2017-18).[1] His appellate counsel, Mark S. Rosen, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Jackson received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon

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

consideration of the no-merit report and an independent review of the record as mandated by ***Anders***, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State filed a criminal complaint charging Jackson with first-degree sexual assault of a child under the age of twelve. The complaint alleged that the eight-year-old victim described two specific incidents where Jackson assaulted her.

The case proceeded to a jury trial and on the second day—after the State's direct examination of the victim—the State filed an amended information charging Jackson with one count of first-degree sexual assault of a child (sexual contact with a child under the age of thirteen), in addition to the original count of first-degree sexual assault of a child under the age of twelve. The same day, Jackson pled guilty to the new charge. Jackson's trial counsel explained that the benefit to Jackson was that the twenty-five year mandatory minimum prison sentence for the charge of first-degree sexual assault of a child under the age of twelve no longer applied.

Pursuant to the plea agreement, the State agreed to move the circuit court to dismiss and read in the charge of first-degree sexual assault of a child under the age of twelve. The State also agreed to recommend a sentence of ten years of initial confinement and to not make a specific recommendation as to extended supervision. The circuit court accepted Jackson's plea and subsequently ordered him to serve a twenty-year sentence comprised of ten years of initial confinement and ten years of extended supervision.

The no-merit report addresses the potential issues of whether Jackson's plea was knowingly, intelligently, and voluntarily entered and whether the sentence was the result of an erroneous exercise of discretion. The plea colloquy, when augmented by the plea questionnaire

and waiver of rights form, the addendum, and the applicable jury instructions (which included the instructions addressing the meaning of sexual contact and sexual intercourse), demonstrates Jackson'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). 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 the issues it raises are without merit and will briefly elaborate on one facet of the plea colloquy.

The record reflects that Jackson was misinformed as to the penalty that he faced. A fine is part of the range of punishments a defendant faces. *See* ***State v. Ramel***, 2007 WI App 271, ¶15, 306 Wis. 2d 654, 743 N.W.2d 502 ("A fine is part of the sentence."). Here, the plea questionnaire form properly stated the sentence but incorrectly stated that Jackson could be ordered to pay a $100,000 fine. There is no fine for a Class B felony. *See* WIS. STAT. § 939.50(3)(b) (2017-18). The circuit court repeated the error by incorrectly advising Jackson during the plea colloquy that he faced a $100,000 fine and neither the prosecutor nor Jackson's trial counsel corrected the misstatement. The circuit court did not, however, impose a fine.

A circuit court's failure to advise a defendant in the plea colloquy of the correct potential punishment does not automatically warrant plea withdrawal. ***State v. Finley***, 2016 WI 63, ¶81, 370 Wis. 2d 402, 882 N.W.2d 761. Here, the amended information, which was filed the same day that Jackson entered his plea, properly omitted any mention of a fine with regard to the charge to which he pled. Additionally, at the beginning of the plea hearing, the prosecutor advised the circuit court of the proper penalty when she detailed the plea negotiations. We conclude that a challenge to the guilty plea based on a claim that Jackson did not understand the

penalty he faced would lack arguable merit. *See* ***State v. Taylor***, 2013 WI 34, ¶39, 347 Wis. 2d 30, 829 N.W.2d 482 (reflecting that a defect in the circuit court's description of the statutory criminal penalty during a plea colloquy is insubstantial and does not raise a question about the validity of the plea when the record shows the defendant knew and understood the penalty); *see also* ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64 ("requiring an evidentiary hearing for every small deviation from the circuit court's duties during a plea colloquy is simply not necessary for the protection of a defendant's constitutional rights" because to do otherwise "would result in the abjuring of a defendant's representations in open court [during a plea hearing] for insubstantial defects").

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Mark S. Rosen is relieved of further representation of Jackson 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