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DISTRICT III

March 7, 2023

To:

Hon. Jon M. Theisen
Circuit Court Judge
Electronic Notice

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
Electronic Notice

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Jefren E. Olsen
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Oshkosh, WI 54903-3310

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

2022AP196-CRNM State of Wisconsin v. William L. Hargrove (L.C. No. 2019CF1715)

Before Stark, P.J., Hruz and Gill, 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).

William L. Hargrove appeals from a judgment, entered on his guilty plea, convicting him of one count of sexual assault of a child under age sixteen, as a repeater. Appellate counsel, Jefren E. Olsen, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Hargrove was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

mandated by ***Anders***, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

According to the criminal complaint, fifteen-year-old Nellie[2] went to the residence of her ex-boyfriend to sell marijuana. She became intoxicated while there. A man she did not know approached her and asked her if she wanted to try to sell marijuana in an upper unit. She went with the man; he then threw her to the floor, and she blacked out. When she regained consciousness, she discovered eight dollars and a pack of methamphetamine on her chest, and she had pain in her anus. She consumed the methamphetamine, believing it was cocaine, hoping it would wake her up.

When Nellie returned home, she was still under the influence. Her mother took her to the hospital. A sexual assault examination was performed, and multiple swabs were collected for evidence. Officers from the Eau Claire Police Department were dispatched to the hospital to take Nellie's statement. She provided further details, which allowed officers to pinpoint the residence in question and to identify Hargrove and Richard A. Bye as suspects.

Police interviewed Hargrove, who initially told them that Bye brought a girl over and he did not know her name. They smoked a cigarette, but the girl was only there for twenty minutes. He acknowledged that the girl did not look very sober to him. He denied having sexual intercourse with her. However, when a detective reminded Hargrove that his DNA was already on file, Hargrove admitted having intercourse with Nellie. Specifically, he admitted having

[2] This matter involves the victim of a crime. Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

vaginal and oral intercourse with her, but he denied anal intercourse. He claimed that he did not give Nellie any money or methamphetamine and claimed that "when girls get high, they want to have sex and that this is normal in the meth community."

Police obtained a warrant to collect a fresh DNA sample from Hargrove. According to the crime lab report, Bye was the source of the male profile found in a stain on Nellie's sweatpants. Hargrove was the source of the male profile found in Nellie's vaginal, cervical and anal swabs. Hargrove and Bye were charged in the same complaint. Hargrove was charged with sexual assault of a child under age sixteen and solicitation of a child for prostitution, both as a repeater. The State also gave notice on both counts, under WIS. STAT. § 939.615(2)(a), that it intended to seek lifetime supervision as a sex offender for Hargrove.

The parties decided to resolve the case with a plea agreement. Under the agreement, Hargrove would plead guilty to the sexual assault charge, and the solicitation charge would be dismissed and read in. The State also agreed that it would remove its request for lifetime supervision as a sex offender. Both sides would be free to argue for the appropriate sentence. The circuit court conducted a plea colloquy and accepted Hargrove's guilty plea. A presentence investigation report was obtained, and a separate defense sentencing memorandum was submitted. The court sentenced Hargrove to ten years of initial confinement followed by fifteen years of extended supervision.

The no-merit report addresses two potential issues: whether Hargrove's plea was knowing and voluntary, and whether Hargrove's sentence was "illegal, the result of an erroneous exercise of discretion, or otherwise based on improper factors." First, there is no arguable basis for challenging Hargrove's plea as being anything other than knowing, intelligent and voluntary.

See ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Hargrove completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses. The form correctly acknowledged the maximum penalties Hargrove faced and specified the constitutional rights he was waiving with his plea. *See* ***Bangert***, 131 Wis. 2d at 262, 271.

The circuit court also conducted a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court has several obligations when conducting a colloquy, *see* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and our review of the record—including the plea questionnaire and waiver of rights form and plea hearing transcript—confirms that the court complied with nearly all of its obligations for taking a guilty plea.

The circuit court did not expressly inquire of Hargrove whether any promises, agreements or threats were made in connection with the plea.[3] *See* ***Bangert***, 131 Wis. 2d at 262. However, not "every small deviation from the circuit court's duties" will warrant relief. *See* ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64. A defendant who seeks plea withdrawal based on a circuit court's failure to fulfill a mandatory obligation must not only make a prima facie showing that the plea was accepted without conformance with WIS. STAT. § 971.08

[3] Although the no-merit report provides a record citation for the circuit court's supposed fulfillment of this obligation, the location identified, "63:12," is non-existent: record item 63 is the one-page clerk's certificate; the plea hearing transcript is only nine pages long; and record item 53 is the sentencing transcript, but Nellie's mother is addressing the court on page twelve of that transcript. Our review of the record reveals no other location from which we could conclude that the required inquiry occurred.

or other mandatory procedures, but he or she must also allege that, in fact, he or she did not know or understand the information that should have been provided at the plea colloquy. Here, counsel advises via the no-merit report that he is "not aware of any information to support an allegation that Hargrove's plea was unknowingly or involuntarily entered." The record likewise contains no information to support such an allegation.

The no-merit report does indicate one potential issue with the plea colloquy—not with the colloquy itself, but with respect to the State's retraction of its request for lifetime supervision as a sex offender. There was some confusion as to whether the circuit court could still impose such supervision, despite the rescinding of the request, and it also appeared that the court and the parties may have at times conflated lifetime *supervision* with lifetime *registration*. Nevertheless, appellate counsel explains that there is no arguably meritorious issue because Hargrove entered his plea despite the court telling him it could still order lifetime supervision, and, in any event, the court ultimately did not order lifetime supervision. [4]

Based on the foregoing, we agree with appellate counsel's conclusion that there is no arguable merit to challenging Hargrove's plea as anything other than knowing, intelligent and voluntary.

The no-merit report also addresses the propriety of Hargrove's sentence. Sentencing is committed to the circuit court's discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.

[4] The circuit court did, however, order lifetime sex offender registration, as required by WIS. STAT. § 301.45(5)(b)1.

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors, and that it did not consider any improper factors. Hargrove's twenty-five-year sentence is within the forty-six-year range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Thus, this court is satisfied that the no-merit report properly analyzes this issue as without arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Jefren E. Olsen is relieved of further representation of William Hargrove 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