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DISTRICT I

March 14, 2023

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Winn S. Collins
Electronic Notice

Thomas J. Erickson
Electronic Notice

John D. Flynn
Electronic Notice

Phillip E. Martin III
Vernon County Jail
400 Courthouse Square St.
Viroqua, WI 54665

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

2021AP709-CRNM State of Wisconsin v. Phillip E. Martin, III
(L.C. # 2019CF2541)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Phillip E. Martin, III, appeals from a judgment of conviction, following a guilty plea, of first-degree child sexual assault—sexual intercourse with a child under the age of thirteen. His appellate counsel, Thomas J. Erickson, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Martin received a copy of the report, was advised of his right to file a response, and has elected not to do so. We have

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

independently reviewed the record and the no-merit report, as mandated by *Anders*. We conclude that, subject to a correction of a minor clerical error in the judgment of conviction, there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgment.

On June 12, 2019, the State charged Martin with one count of first-degree child sexual assault—sexual intercourse with a child under the age of thirteen. The complaint alleged that Martin sexually assaulted the twelve-year-old granddaughter of his father’s girlfriend. According to the complaint, Martin admitted to the assault and wrote the victim an apology letter.

The matter was ultimately resolved by a plea agreement, whereby Martin pled guilty to the crime as charged in the Information. The circuit court conducted a plea colloquy, accepted Martin’s guilty plea, and found him guilty. The circuit court sentenced Martin to sixteen years of initial confinement and ten years of extended supervision.

The no-merit report addresses the potential issues of whether Martin’s plea was valid and whether the circuit court erroneously exercised its sentencing discretion.

We agree with appellate counsel that there is no arguable merit to a claim that Martin’s plea was invalid. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). The circuit court established at the plea hearing that Martin understood the nature of the crime to which he was pleading guilty, the penalty he faced, and the constitutional rights he was waiving by entering the plea. The circuit court also established that Martin signed a guilty plea questionnaire/waiver of rights form and an addendum, and that Martin understood the contents of those documents. See *State v. Pegeese*, 2019 WI 60, ¶¶36-37, 387 Wis. 2d 119, 928 N.W.2d

590. The circuit court reviewed the relevant jury instruction with Martin, confirmed his understanding of the elements of the charge, and asked him to sign the instruction. The circuit court also conducted a colloquy with Martin that complied with its obligations when accepting guilty pleas. *See id.*, ¶23; *see also Bangert*, 131 Wis. 2d at 266-72; WIS. STAT. § 971.08. Thus, there is no arguable merit to a claim that Martin’s plea was anything other than knowing, intelligent, and voluntary.

With regard to the circuit court’s sentencing decision, our review of the record confirms that the circuit court thoughtfully considered the relevant sentencing objectives and factors, focusing particularly on the gravity of the offense. *See State v Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and was 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). Therefore, there would be no arguable merit to a challenge to the circuit court’s sentencing discretion.

There is, however, a clerical error in the judgment of conviction. The judgment of conviction states that Martin pled guilty to first-degree child sexual assault—sexual contact with a child under the age of thirteen. Martin actually pled guilty to first-degree child sexual assault—sexual *intercourse* with a child under the age of thirteen. We, therefore, direct that, upon remittitur, the judgment of conviction be amended to correct the error. *See State v. Prihoda*, 2000 WI 123, ¶¶26-27, 239 Wis. 2d 244, 618 N.W.2d 857.

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

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 Thomas J. Erickson is relieved of further representation of Phillip E. Martin 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