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DISTRICT I

April 4, 2023

To:

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Circuit Court Judge
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Clerk of Circuit Court
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Winn S. Collins
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1383-CRNM State of Wisconsin v. Seth Daniel Brown (L.C. # 2018CF1073)

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).

Seth Daniel Brown appeals from his judgment of conviction entered after he pled guilty to repeated sexual assault of the same child. He also appeals the order denying his motion for postconviction relief. His appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Brown was advised of his right to file a response, but did not do so. Upon this court's independent review of the record as mandated by ***Anders***, and counsel's report, we

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

conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

Brown was charged in March 2018 with two counts of second-degree sexual assault of a child under the age of sixteen. The State subsequently filed an amended complaint approximately two weeks later in which it added the persistent repeater enhancer to the two counts against Brown, based on a previous conviction and a juvenile adjudication for sex offenses against children. *See* WIS. STAT. § 939.62(2m) (2017-18). The persistent repeater enhancer would require the trial court to impose a sentence of life imprisonment without the possibility of extended supervision. *See* § 939.62(2m)(c) (2017-18).

The complaint was again amended in December 2018, where the charges against Brown were changed to repeated sexual assault of a child and child enticement, based on records from a GPS unit issued by the Department of Corrections (DOC) that Brown was wearing as a condition of his supervision from a previous conviction. Both of those charges included the persistent repeater enhancer.

Just before the jury trial was to begin, Brown chose to resolve this matter with a plea. In exchange for his guilty plea to the charge of repeated sexual assault of the same child, the persistent repeater enhancer would be dismissed, and the State would recommend twelve to fifteen years of initial confinement with the term of extended supervision left to the discretion of the trial court. Additionally, the other charges against Brown would be dismissed but read in at sentencing, those being the child enticement charge in this case, as well as a charge in a joined case of first-degree sexual assault of a child under the age of thirteen, where Brown was charged with having sexual contact with another child.

The trial court accepted Brown's plea and sentenced him to twenty years of initial confinement followed by fifteen years of extended supervision. In particular, the court referred to Brown committing "the inexplicable and unimaginable again and again and again" against two children while on supervision from a previous child sexual assault, while he was still wearing the GPS monitor issued by the DOC. The court explained that a sentence above the recommendation by the State was therefore "very appropriate."

Brown filed a postconviction motion seeking resentencing, asserting that the trial court erroneously exercised its discretion by failing to consider the minimum amount of confinement necessary to meet the sentencing objectives it described at the sentencing hearing. Specifically, Brown pointed to comments made by the trial court during that hearing, where the court stated that it considered the plea agreement—including the State's recommendation of twelve to fifteen years of initial confinement—as "reasonable." Therefore, Brown argued, "[i]f the recommendation of 12 to 15 years confinement was indeed 'reasonable' then, logically, that range of incarceration would be 'the minimum amount of custody or confinement' necessary in this matter to achieve the court's sentencing objectives," citing ***McCleary v. State***, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971).

The trial court rejected that argument. The court explained that its comments regarding the State's initial confinement recommendation were "made within the context of its discussion about the reasonableness of the plea agreement as a whole and the plea bargaining process in general." Calling Brown's argument a "hypertechnical reading of the court's comments," the court stated that it had explained on the record why it believed that its sentencing objectives could not be achieved with less than twenty years of initial confinement. It further noted that it

is "axiomatic" that a trial court is not bound by the plea negotiations. The court therefore denied Brown's postconviction motion. This no-merit appeal follows.

Appellate counsel addresses three issues in the no-merit report: whether there would be any arguable merit to appealing the validity of Brown's plea; whether there would be arguable merit to a claim that the trial court erroneously exercised its discretion in sentencing Brown; and whether there would be arguable merit to appealing the trial court's denial of Brown's postconviction motion seeking resentencing.

We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of any of these issues. The thorough plea colloquy by the trial court complied with all of the requirements set forth in WIS. STAT. § 971.08 and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, Brown signed a plea questionnaire and waiver of rights form, which further demonstrates Brown's understanding of the information he was entitled to and that his plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 828, 416 N.W.2d 627 (Ct. App. 1987).

The record also reflects that with regard to sentencing, the court considered relevant sentencing objectives and factors. *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. Furthermore, the thirty-five-year term of imprisonment imposed by the trial court is within the forty-year maximum authorized by law, *see* WIS. STAT. §§ 948.025(1)(e), 939.50(3)(c) (2017-18), and therefore there would be no arguable merit to a claim that Brown's sentence is unduly harsh or unconscionable, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

Additionally, given the trial court's thorough sentencing analysis, we agree with appellate counsel's assessment that there would be no arguable merit to a claim that the trial court erred in denying Brown's postconviction motion for resentencing, particularly after it clarified its sentencing comments regarding the reasonableness of the plea agreement. *See* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Brown 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