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DISTRICT II

June 28, 2023

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

2020AP504-CRNM State of Wisconsin v. Amani X. Reid (L.C. #2018CF1193)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Amani X. Reid appeals a judgment of conviction for two counts of child enticement. Reid's appointed appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Reid has filed a response to the no-merit report. Upon consideration of the no-merit report and Reid's response, and upon an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm

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

the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Reid sexually assaulted two of his younger female relatives, on numerous occasions, between August 2007 and August 2015. Based on those allegations, the State initially charged Reid with two counts of repeated sexual assault of a child. The parties later reached a plea agreement, however, which provided that Reid would enter guilty or no-contest pleas to two amended counts of child enticement.

In exchange for Reid's pleas, the State agreed to recommend that the circuit court impose and stay consecutive sentences of five years' initial confinement and five years' extended supervision on each count. The State further agreed to recommend that the court place Reid on probation for a period of five years, with twelve months of conditional jail time and with two of those twelve months imposed and stayed for use at Reid's probation agent's discretion. The State also agreed to recommend that the court allow Reid's probation agent to decide whether Reid should be permitted to have contact with individuals under the age of eighteen. The plea agreement contemplated that the State would ask the court to impose a lifetime sex offender registration requirement. The defense was free to argue at sentencing.

The circuit court conducted a plea colloquy with Reid, supplemented by a signed plea questionnaire and waiver of rights form. Following the colloquy, the court accepted Reid's guilty pleas to the two child enticement counts, finding that they were knowingly, voluntarily, and intelligently made. The court also found that the criminal complaint provided a factual basis for Reid's pleas.

Prior to sentencing, Reid's attorney submitted four character letters to the circuit court. At the beginning of the sentencing hearing, the court confirmed that it had reviewed those letters. After the State made its sentencing argument, the court heard from one of the victims, along with her mother and father. The defense then made its sentencing argument, and Reid exercised his right of allocution. The court ultimately imposed consecutive sentences of two and one-half years' initial confinement and five years' extended supervision on each count. Consistent with the State's recommendation, the court ordered Reid to register as a sex offender for the remainder of his lifetime.

The no-merit report addresses whether there would be arguable merit to a claim that Reid's guilty pleas were not knowingly, intelligently, and voluntarily entered. The record shows that the circuit court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court properly relied upon Reid's signed plea questionnaire and waiver of rights form when fulfilling its required duties during the plea colloquy. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). On this record, we agree with appellate counsel that any challenge to Reid's pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its sentencing discretion. During its sentencing remarks, the court appropriately considered the gravity of Reid's offenses, including their impact on the victims; Reid's character and rehabilitative needs; the need protect the community; and the goal of deterring others from committing similar conduct. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-41, 270 Wis. 2d 535, 678 N.W.2d 197; ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court

considered probation but concluded that a probationary disposition would be inappropriate, given the seriousness of the offenses and the need to "separate[]" Reid from the community to address his rehabilitative needs, protect the public, and deter others. *See* ***Gallion***, 270 Wis. 2d 535, ¶44. Reid's sentences are well within the maximum allowed by law and, therefore, are presumptively not unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Under these circumstances, any claim that the court erroneously exercised its sentencing discretion would lack arguable merit.

In his response to the no-merit report, Reid argues that the circuit court erroneously exercised its discretion by ordering lifetime sex offender registration. Specifically, Reid argues the court erred by concluding that WIS. STAT. § 973.048(2m)—which allows for exceptions to sex offender registration in certain circumstances—did not apply.

This claim lacks arguable merit. WISCONSIN STAT. § 973.048(2m) provides, in relevant part, that when a court imposes a sentence for a violation of certain enumerated statutes—one of which is WIS. STAT. § 948.07 (child enticement)—the court "shall require the person to comply with the [sex offender registration] reporting requirements under [WIS. STAT. §] 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under [§] 301.45(1m)." Section 301.45(1m)(a), in turn, sets forth two scenarios in which a person "is not required to comply with the reporting requirements under this section." The first scenario applies when, among other things, the person has committed a violation of WIS. STAT. §§ 948.02(1) or (2), 948.025, or 948.085(2). Sec. 301.45(1m)(a)1m.a. The second scenario applies when, among other things, a person has committed a violation of WIS. STAT. § 940.225(3)(a). Sec. 301.45(1m)(a)2m.a.

Here, Reid was convicted of two violations of WIS. STAT. § 948.07. As a result, the exceptions to sex offender registration in WIS. STAT. § 301.45(1m)—which apply only to violations of WIS. STAT. §§ 948.02(1) and (2), 948.025, 948.085(2), and 940.225(3)(a)—are plainly inapplicable. The circuit court recognized as much during its sentencing remarks, stating that "the exception under [WIS. STAT. §] 973.048(2m)," which references § 301.45(1m), did not apply because Reid had not been convicted of sexual assault. The court also found that lifetime registration was "necessary for public protection." That finding provided an additional basis for the court's determination that Reid did not qualify for the exceptions set forth in § 301.45(1m). *See* § 301.45(1m)(a)1m.d., 2m.c. (requiring a court to find, for either exception to apply, that "[i]t is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements under this section").[2]

Reid next argues that his trial attorney was constitutionally ineffective in three ways. This claim lacks arguable merit because, for each of trial counsel's alleged errors, Reid cannot show both that trial counsel performed deficiently and that counsel's deficient performance prejudiced the defense. *See* ***State v. Breitzman***, 2017 WI 100, ¶37, 378 Wis. 2d 431, 904 N.W.2d 93.

[2] Aside from arguing that the circuit court improperly determined that WIS. STAT. § 973.048(2m) did not apply, Reid does not provide any other basis to conclude that the court erroneously exercised its discretion by ordering lifetime sex offender registration, rather than ordering Reid to register for a period of fifteen years. *See* WIS. STAT. § 301.45(5)(a)2. (stating that a person who has been sentenced to prison for a sex offense and ordered to register as a sex offender must no longer comply with the registration requirements "15 years after discharge from parole, extended supervision, community supervision, or aftercare supervision for the sex offense"; § 301.45(5)(b)3. (requiring a person to comply with the registration requirements "until his or her death" when ordered to do so by a court). The no-merit report asserts that the circuit court "appears to have given a proper explanation" for its discretionary decision to impose a lifetime registration requirement. Having independently reviewed the record, we agree that there would be no arguable merit to a claim that the court erroneously exercised its discretion by ordering Reid to register as a sex offender for the remainder of his life, rather than for fifteen years.

First, Reid asserts that his trial attorney was ineffective by failing to "object or argue [WIS. STAT. § 973.048(2m)] at sentencing[.]" We have already determined, however, that there would be no arguable merit to a claim that the circuit court erred by concluding that § 973.048(2m) was inapplicable to Reid. As such, trial counsel's failure to raise an objection or argument based on § 973.048(2m) was neither deficient nor prejudicial. *See* ***State v. Berggren***, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (counsel does not perform deficiently by failing to raise a legal challenge that would have been properly denied); ***State v. Simpson***, 185 Wis. 2d 772, 784, 519 N.W.2d 662 (Ct. App. 1994) (defendant is not prejudiced by counsel's failure to make a motion that would have been denied).

Second, Reid contends that his trial attorney "refused to cross[-]examine and investigate [the] victims during the case." As to cross-examination, Reid does not identify any proceeding at which the victims were called to testify, such that trial counsel could have cross-examined them. The record confirms that the victims never provided testimony in this case. Thus, there would be no arguable merit to a claim that trial counsel performed deficiently by failing to cross-examine the victims.

Regarding investigation, Reid does not identify what type of additional investigation he believes his trial attorney should have conducted or what information that investigation would have revealed. Reid does not, for instance, assert that further investigation would have provided evidence that he did not commit the offenses for which he was convicted. In addition, Reid does not allege that, if his trial attorney had performed some type of further investigation, he would not have entered guilty pleas and would have insisted on going to trial. Nor does Reid assert that his sentences would have been different had trial counsel investigated the victims further. Under these circumstances, there is no basis to conclude it is reasonably probable that the result of this

case would have been different had trial counsel conducted any additional investigation regarding the victims. *See* ***Breitzman***, 378 Wis. 2d 431, ¶39 (to demonstrate prejudice, a defendant must show a reasonable probability that the result of the proceeding would have been different absent counsel's alleged errors); *see also* ***State v. Bentley***, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996) (to withdraw a guilty plea based on ineffective assistance of counsel, a defendant must show a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial).

Third, Reid argues that during sentencing, his trial attorney did not sufficiently emphasize Reid's young age at the time he committed the offenses or the fact that Reid himself had been sexually abused as a child. This claim lacks arguable merit because the record shows that trial counsel *did* emphasize these facts during his sentencing argument. For instance, with respect to the past sexual abuse, trial counsel expressly argued that it was "not unreasonable to suggest that whatever my client experienced at age 8 or 9, before any of these incidents took place, led to what has happened to [the victims]." In addition to trial counsel's remarks during the sentencing hearing, two of Reid's character letters discussed the sexual abuse, and one of the letters emphasized Reid's young age at the time he committed the offenses. On this record, there would

be no arguable merit to a claim that trial counsel performed deficiently by failing to emphasize those factors further during his sentencing argument.[3]

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

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved from further representing Amani X. Reid in this appeal. *See* WIS. STAT. RULE 809.32(3)

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

Samuel A. Christensen
Clerk of Court of Appeals

[3] Reid may also intend to argue that the circuit court erroneously exercised its sentencing discretion by failing to give sufficient weight to his young age at the time he committed the offenses and to his status as a victim of sexual abuse. Any such claim, however, would lack arguable merit. The court expressly considered these factors during its sentencing remarks and explained why it did not believe that they justified more lenient sentences. Reid's mere belief that the court should have given these factors additional weight does not provide an arguable basis for a claim that the court erroneously exercised its sentencing discretion. *See* ***State v. Stenzel***, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20 ("[T]he weight that is attached to a relevant factor in sentencing is … within the wide discretion of the sentencing court.").