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DISTRICT III

February 6, 2024

To:

Hon. Lamont K. Jacobson
Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Megan Elizabeth Lyneis
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Michael D. Mayotte
517 S. Park Avenue
Medford, WI 54451

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

2023AP165-CRNM State of Wisconsin v. Michael D. Mayotte
(L. C. No. 2018CF1024)

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).

Michael Mayotte appeals from a judgment convicting him, as a repeat offender, of one count of exposing genitals to a child and one count of felony bail jumping. Attorney Megan Lyneis has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).[1] Mayotte was informed of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by

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

Anders v. California, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

The State initially charged Mayotte with the use of a computer to facilitate a child sex crime and two counts of bail jumping. The charges arose out of an undercover operation in which a police officer posed online as a fifteen-year-old girl. Following an exchange of sexually explicit messages, Mayotte (who was released on bond at the time) made arrangements to meet the fictitious girl to engage in sexual activities. Police arrested Mayotte near the designated meeting site, with recently purchased condoms in his possession.

Nearly three years later, after multiple substitutions of counsel, Mayotte agreed to plead no contest to a reduced charge of exposing genitals to a child and one of the bail jumping counts.[2] In exchange, the State agreed that the additional bail jumping count would be dismissed as a read-in offense. The parties also agreed to make a joint sentencing recommendation on the exposure count for three years of initial confinement followed by two years of extended supervision, with 1,064 days of sentence credit and with no recommendation that Mayotte register as a sex offender. On the bail jumping count, the parties would jointly recommend a consecutive term of one year of initial confinement followed by three years of extended supervision. The circuit court accepted Mayotte's pleas after conducting a plea colloquy, reviewing Mayotte's signed plea questionnaire, and ascertaining that Mayotte acknowledged a factual basis to support the pleas—even though the facts alleged in the complaint did not match the elements for the exposure charge.

[2] The parties resolved two other cases at the same hearing, but those cases are not before us in this appeal.

The circuit court proceeded directly to sentencing without ordering a presentence investigation report. After hearing from the parties, the court briefly discussed factors related to the severity of the offenses as well as Mayotte's character, and it explained how they related to the court's sentencing goals of protecting the public and meeting Mayotte's rehabilitative needs. The court then adopted the parties' joint sentence recommendation.

The no-merit report addresses the validity of the pleas and sentences. Upon reviewing the record, we agree with counsel's conclusion that Mayotte has no arguably meritorious basis to challenge either the pleas or sentences. The circuit court conducted an adequate plea colloquy, and Mayotte does not assert that he misunderstood the charges or his rights. A court is permitted to accept the factual basis as represented by the parties as part of a negotiated plea to an amended charge even if those facts may not meet the elements of the charge. *See* ***State v. Sutton***, 2006 WI App 118, ¶¶16-23, 294 Wis. 2d 330, 718 N.W.2d 146. The sentences imposed were within the maximum available penalties and were not unduly harsh, given the circumstances of the case.

Our independent review of the record discloses no other potential issues for appeal. Because Mayotte's pleas forfeited the right to raise other nonjurisdictional defects and defenses (with some exceptions not relevant here), we need not consider whether there was a speedy trial violation. *See* ***State v. Kelty***, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886 (discussing general guilty-plea waiver rule); ***Hatcher v. State***, 83 Wis. 2d 559, 563, 266 N.W.2d 320 (1978) (applying guilty-plea-waiver rule to speedy trial issue). We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders***. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Megan Lyneis is relieved of any further representation of Michael Mayotte in this matter pursuant to 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