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DISTRICT I

November 12, 2024

To:

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Circuit Court Judge
Electronic Notice

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

Brian Patrick Mullins
Electronic Notice

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Robert A. Maynard 625261
Jackson Correctional Inst.
P.O. Box 233
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You are hereby notified that the Court has entered the following opinion and order:

2024AP735-CRNM State of Wisconsin v. Robert A. Maynard (L.C. # 2022CF46)

Before White, C.J., Geenen and Colón, 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).

Robert A. Maynard appeals a judgment of conviction entered upon his guilty plea to one count of child enticement. *See* WIS. STAT. § 948.07(1) (2021-22).[1] Appellate counsel, Attorney Brian Patrick Mullins, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Maynard was served with a copy of the no-merit report

[1] Maynard committed his crime in this case while the 2017-18 version of the Wisconsin Statutes was in effect, but the relevant portions of the statutes are unchanged in the current 2021-22 version. Therefore, for ease of reading, all references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

and advised that he had the right to respond but he did not file a response. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders***, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State filed the criminal complaint in this case while Maynard was in prison serving an aggregate twenty-five-year sentence, imposed in 2021, following his Waukesha County convictions for possessing child pornography and sexually exploiting a child. In the instant complaint, filed in January 2022, the State alleged that Lydia, then twelve years old, had recently disclosed an incident that occurred approximately four years earlier.[2] Lydia reported that she had spent the night at a family member's home where Maynard also lived, and while she was in bed, Maynard came into the bedroom and applied a medicinal rub to her chest. While doing so, he repeatedly touched her breasts and commented about their size. She fell asleep after Maynard left the room, but she awakened to discover that he "was spooning her" and that "her underwear was on backwards and down around her mid-thighs." Lydia stated that she felt "an 'aching pain' between her legs, and that she had a little bit of bruising in the middle of her thighs." Lydia reported that Maynard later told her that she had grown too old to be his friend, and then he started talking to her younger sister. The complaint further reflected that Lydia's younger sister was Maynard's victim in the Waukesha County case. The State charged Maynard in this case with first-degree sexual assault of a child younger than thirteen years old, a Class B felony

[2] Pursuant to WIS. STAT. § 950.02 and the policy reflected in WIS. STAT. RULE 809.86, we refer to the victim by a pseudonym.

carrying a maximum penalty of sixty years of imprisonment. *See* WIS. STAT. §§ 948.02(1)(e), 939.50(3)(b).

Maynard quickly decided to resolve the instant matter with a plea agreement. Pursuant to its terms, he agreed to plead guilty to an amended charge of child enticement, and the State agreed to recommend an evenly bifurcated, consecutive ten-year term of imprisonment. The circuit court accepted Maynard's plea to the amended charge.

At sentencing, Maynard faced a maximum penalty of twenty-five years of imprisonment and a $100,000 fine. *See* WIS. STAT. §§ 948.07(1), 939.50(3)(d). The circuit court followed the State's recommendation and imposed an evenly bifurcated ten-year term of imprisonment, consecutive to any sentence that Maynard was already serving. He appeals.

The no-merit report addresses the potential issues of whether Maynard entered a valid guilty plea and whether the circuit court properly exercised its sentencing discretion. We agree with appellate counsel that these issues lack arguable merit, but some additional discussion is warranted.

Appellate counsel does not address Maynard's absence from the courtroom during both the plea hearing on June 10, 2022, and the subsequent sentencing hearing on September 15, 2022. Maynard instead appeared via Zoom at each of those hearings, consented to appearing via Zoom, and waived the right to attend in person. The waivers satisfied the requirements of ***State v. Soto***, 2012 WI 93, ¶50, 343 Wis. 2d 43, 817 N.W.2d 848. Accordingly, any challenge to the proceedings based on Maynard's appearances by Zoom would be frivolous within the meaning of ***Anders***.

Next, we note that Maynard did not sign the plea questionnaire and waiver of rights form and addendum that his trial counsel filed in advance of the plea hearing. His trial counsel explained to the circuit court that Maynard had reviewed the form and addendum with counsel by telephone. Maynard personally confirmed during the plea hearing that he had reviewed the questionnaire with his trial counsel, that he understood it, and that he did not sign the questionnaire and addendum only because he had reviewed them by telephone.[3] Moreover, a plea questionnaire is not an essential component of the plea procedure. Rather, the questionnaire is a tool that the circuit court may use in conducting a plea colloquy. ***State v. Hoppe***, 2009 WI 41, ¶30, 317 Wis. 2d 161, 765 N.W.2d 794. The colloquy, not the questionnaire, must establish that the defendant entered a knowing, intelligent, and voluntary plea. ***Id.***, ¶31. Here, the circuit court established that Maynard was thirty-seven years old, and that he had a high school education. The circuit court then placed Maynard under oath and completed a plea colloquy that satisfied the circuit court's statutory and common law obligations when accepting a guilty plea. *See* ***id.***, ¶18; WIS. STAT. § 971.08(1).

Among the circuit court's obligations during a plea colloquy is to establish the defendant's understanding of the elements of any charge to which the defendant pleads guilty. ***State v. Brown***, 2006 WI 100, ¶¶57-58, 293 Wis. 2d 594, 716 N.W.2d 906. The three elements of child enticement in violation of WIS. STAT. § 948.07 are: (1) the defendant either caused or attempted to cause a child to go into a vehicle, building, room, or secluded place; (2) the

[3] Appellate counsel states in the no-merit report that Maynard signed the plea questionnaire, and does not acknowledge the portion of the plea hearing addressing Maynard's failure to sign the form. We remind appellate counsel that we expect a no-merit report to reflect attention to detail and to include an accurate review of the proceedings.

defendant did so with the intent to take one of the six actions listed in § 948.07;[4] and (3) the child was younger than eighteen years of age. ***State v. Hendricks***, 2018 WI 15, ¶21, 379 Wis. 2d 549, 906 N.W.2d 666. When establishing the defendant's understanding of these elements, the circuit court must identify, and the defendant must acknowledge, at least one of the six prohibited intentions as the mode of committing the crime. ***Id.***, ¶26.

We have considered that Maynard advised the circuit court in his plea questionnaire that he understood the elements of child enticement set forth in an accompanying attachment, but the attachment was the pattern jury instruction for child enticement, WIS JI—CRIMINAL 2134, which included a blank space instead of identifying which of the six actions described in WIS. STAT. § 948.07(1)-(6) Maynard had intended to take. However, the circuit court explained to Maynard at the outset of the plea hearing that the State had filed an amended information, and the circuit court then read the charge aloud, informing Maynard of each of the three elements of the crime of child enticement and stating how those elements related to his conduct: "you, with the intent to have sexual contact with the child in violation of section 948.02, did cause the child [Lydia] ... who had not attained the age of 18 years, to go to a secluded place contrary to statute." The circuit court asked Maynard if he understood the nature of the amended charge. Maynard

[4] The six actions enumerated in WIS. STAT. § 948.07 are:

> (1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085 or 948.095. (2) Causing the child to engage in prostitution. (3) Exposing genitals, pubic area, or intimate parts to the child or causing the child to expose genitals, pubic area, or intimate parts in violation s. 948.10. (4) Recording the child engaging in sexually explicit conduct. (5) Causing bodily or mental harm to the child. (6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

Sec. 948.07(1)-(6).

said that he did. The record therefore demonstrates that Maynard understood the elements of the crime of child enticement.[5] *See* ***State v. Bangert***, 131 Wis. 2d 246, 267-68, 389 N.W.2d 12 (1986) (describing numerous ways, including referencing a charging document, that the circuit court may ascertain the defendant's understanding of the elements).

The totality of the record demonstrates that Maynard entered his guilty plea knowingly, intelligently, and voluntarily. Further pursuit of a challenge to the validity of that plea would be frivolous within the meaning of ***Anders***.

Finally, we conclude that Maynard could not mount an arguably meritorious claim that the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197 (explaining that a circuit court exercises its discretion at sentencing, and appellate "review is limited to determining if discretion was erroneously exercised"). The circuit court indicated that the primary sentencing goals were deterrence and protection of the public, and the circuit court discussed the factors that it viewed as relevant to achieving those goals. *See* ***id.***, ¶¶41-43. The circuit court's discussion included consideration of the mandatory sentencing factors, namely, "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentence imposed was well within the maximum allowed 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 as to shock public sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d

[5] When accepting a plea to child enticement under WIS. STAT. § 948.07, where the mode of commission is the defendant's intent to have sexual contact with a child in violation of WIS. STAT. § 948.02, the circuit court is not required to establish the defendant's understanding of the elements of § 948.02. ***State v. Hendricks***, 2018 WI 15, ¶¶18, 22, 379 Wis. 2d 549, 906 N.W.2d 666.

457 (1975). Accordingly, a challenge to the circuit court's exercise of sentencing discretion would be frivolous within the meaning of ***Anders***.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved of any further representation of Robert A. Maynard. *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