



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III/II

January 9, 2013

To:

Hon. Eric J. Lundell
Circuit Court Judge
St. Croix County Courthouse
1101 Carmichael Road
Hudson, WI 54016

Lori N. Meyer
Clerk of Circuit Court
St. Croix County Courthouse
1101 Carmichael Road
Hudson, WI 54016

Eric G. Johnson
District Attorney
1101 Carmichael Road
Hudson, WI 54016

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Eric Donald Hansen 568984
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2011AP2770-CRNM State of Wisconsin v. Eric Donald Hansen (L.C. #2009CF315)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Eric Hansen appeals from his sentence and judgment of conviction, entered after he pled no contest to second-degree sexual assault of a child under sixteen years of age, contrary to WIS. STAT. § 948.02(2) (2009-10).¹ Attorney Timothy O'Connell has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report addresses the validity of the plea and sentence. Hansen

was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

First, Hansen does not have an arguable basis for withdrawing his no contest plea. A plea may be withdrawn after sentencing only when the defendant can demonstrate by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice such as evidence that the plea was coerced, uninformed, or unsupported by a factual basis, that counsel provided ineffective assistance, or that the prosecutor failed to fulfill the plea agreement. *State v. Krieger*, 163 Wis.2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any of such defect here.

Pursuant to the plea agreement, the State dismissed and read in additional charges. The plea agreement did not provide for a sentencing recommendation, other than that the State agreed to request a presentence investigation report (PSI). A PSI was ordered and prepared. At the sentencing hearing, the State recommended twelve to fourteen years of initial confinement followed by ten years of extended supervision. Hansen's counsel recommended a probationary term consisting of two years of initial confinement followed by six years of extended supervision, stayed and imposed, and six to nine more months of conditional jail time. The circuit court sentenced Hansen to twelve years and six months of initial confinement followed by twelve years and six months of extended supervision.

The circuit court conducted a plea colloquy which explored Hansen's understanding of the charge against him, the penalties he faced, and the constitutional rights he would be waiving.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

See WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The court also inquired into the defendant's ability to understand the proceedings and the voluntariness of his decision. In addition, the record includes a plea questionnaire signed by Hansen and his attorney. Hansen indicated to the court that he understood the information explained on the questionnaire and went over it with his attorney. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). There is nothing in the record to suggest counsel's performance was deficient. Thus, Hansen's plea was valid and operated to waive all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Hansen's sentence would also lack arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record shows that Hansen was afforded the opportunity to address the court prior to sentencing and he did so. The trial court considered the standard sentencing factors and explained their application to this case. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court considered on the record the gravity of the offense, Hansen's character, his rehabilitative needs, his criminal record, and the safety needs of the community.

The sentence imposed by the court was within the applicable penalty range. See WIS. STAT. § 948.02(2) (classifying sexual assault of a child under sixteen as a Class C felony); WIS. STAT. § 939.50(3)(c) (maximum penalty for a Class C felony is a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both). There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh. *State v. Grindermann*, 2002

WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. The sentence imposed here was not “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.* (citation omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further 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 Timothy O’Connell is relieved of any further representation of Eric Hansen in this matter. *See* WIS. STAT. RULE 809.32(3)

Diane M. Fremgen
Clerk of Court of Appeals