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DISTRICT II

February 27, 2013

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

2012AP2665-CRNM State of Wisconsin v. Wesley O. Wigginton (L.C. #2011CF474)

Before Brown, C.J., Neubuaer, P.J., and Reilly, J.

Wesley O. Wigginton appeals from a judgment convicting him of two counts of second-degree sexual assault of a child. Wigginton's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Wigginton received a copy of the report and was informed of his right to file a response but has not done so. Upon consideration of the report and our independent review of the record as

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

mandated by ***Anders***, we conclude that this appeal may be disposed of summarily. *See* WIS. STAT. RULE 809.21. We affirm the judgment and relieve Attorney Mark S. Rosen of further representing Wigginton in this matter.

Wigginton engaged in sexual activity with a fifteen-year-old boy who responded to Wigginton's online personal ad indicating an interest in meeting men. Wigginton claimed he thought the boy was eighteen. He pled guilty to two counts of second-degree sexual assault of a child. Seven identical counts and one count of using a computer to facilitate a child sex crime were dismissed and read in for sentencing. The court ordered concurrent sentences of eight years' initial incarceration and ten years' extended supervision. It also ordered Wigginton to pay $495.83 in restitution for the victim's laptop computer that the police had confiscated. Wigginton objected at sentencing and again by postconviction motion, indicating that the police intended to return the undamaged computer to the victim. The court thus amended the judgment to reflect that Wigginton no longer owed the restitution. This no-merit appeal followed.

The no-merit report first considers whether Wigginton's guilty pleas were knowingly, voluntarily and intelligently entered. The record shows that the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1) and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986).[2] The court ascertained that Wigginton understood the constitutional rights he was relinquishing, as listed on

[2] The court did not expressly advise Wigginton of potential deportation consequences if he is a noncitizen. *See* WIS. STAT. § 971.08(1)(c). A plea withdrawal is permitted upon such a failure if the defendant later shows that the plea is likely to result in his or her deportation. Sec. 971.08(2). Wiggington checked his understanding about that consequence on the plea questionnaire/waiver of rights form, however, and the presentence investigation report indicates that he was born in Illinois. We conclude that this issue has no arguable merit.

his signed plea questionnaire, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987), and that he had knowledge of the elements of the offense, *see* ***State v. Trochinski***, 2002 WI 56, ¶29, 253 Wis. 2d 38, 644 N.W.2d 891, and used the criminal complaint to ascertain that the plea had a factual basis, ***State v. Black***, 2001 WI 31, ¶14, 242 Wis. 2d 126, 624 N.W.2d 363. We agree with counsel that no issue of arguable merit could arise.

The report also addresses the court's exercise of sentencing discretion. Sentencing is left to the discretion of the trial court and appellate review is limited to determining whether that discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court must address sentencing objectives that include the protection of the public, punishment and rehabilitation of the defendant, and deterrence, ***id.***, ¶40, and the primary sentencing factors—the gravity of the offense, the character of the offender and the need to protect the public, ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). The weight given to the individual factors is within the court's discretion. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court must provide a "rational and explainable basis" for the sentence it imposes to allow this court to ensure that discretion in fact was exercised. ***Gallion***, 270 Wis. 2d 535, ¶¶39, 76.

We agree with appellate counsel that no basis exists to disturb the sentence. The court weighed proper sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough, rational explanation for imposing the sentences it did. It noted that Wigginton had no criminal history, was gainfully employed and took responsibility for his crimes. It also noted, however, that it deemed protection of the community and deterrence to be "very important." Considering that Wigginton faced a total of eighty years' imprisonment and $200,000 in fines, we cannot conclude that the imposed sentence is so excessive or unusual so as

to shock public sentiment. *See* ***Ocanas***, 70 Wis. 2d at 185; *see also* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507.

Based on an independent review of the record, we find no grounds for reversing the judgment of conviction. Any further appellate proceedings would be without arguable merit within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Mark S. Rosen is relieved from further representing Wigginton in this matter.

Diane M. Fremgen
Clerk of Court of Appeals