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**DISTRICT IV**

April 8, 2013

To:

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

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2011AP2218-CRNM      State of Wisconsin v. Chester A. Mast (L.C. #2010CF94)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Chester Mast appeals a judgment convicting him of repeated sexual assault of a child. Attorney Faun Moses has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12)<sup>1</sup>; *see also Anders v. California*, 386 U.S. 738, 744 (1967), and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of Mast's plea and

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<sup>1</sup> All further references to the Wisconsin Statutes are to the 2011-12 version, unless otherwise noted.

sentence. Mast was sent a copy of the report and has filed a response asking whether it is possible for him to serve his sentence in Missouri. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, the conviction was based upon the entry of a no contest plea, and we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); *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 such defect here.

The State agreed to cap its sentencing recommendation at seven years of initial confinement and ten years of extended supervision as part of the plea deal, and the State followed through on that agreement. The circuit court conducted a plea colloquy exploring Mast's understanding of the nature of the charge, the penalty range and other direct consequences of the plea, as well as the constitutional rights being waived. *See WIS. STAT.* § 971.08; *Bangert*, 131 Wis. 2d at 266-72; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The court made sure Mast understood that it would not be bound by any sentencing recommendations. The court also inquired into Mast's ability to understand the proceedings and the voluntariness of the plea decision. In addition, the record includes a signed plea questionnaire. Mast indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaint, which Mast acknowledged to be accurate, provided a sufficient factual basis for the plea. We see nothing in the record to suggest that counsel's performance was in any way deficient, and Mast has not alleged any other facts that would give rise to a manifest injustice. Therefore, Mast's plea was valid and operated to waive all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Mast's sentence would also lack arguable merit. Our review of a sentence determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Mast was afforded an opportunity to comment on the PSI and to address the court. The court proceeded to consider 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. Regarding the severity of the offense, the court explained that Mast had violated the trust of family members, taken photographs of his victim to memorialize the sexual conduct, and had manipulated or intimidated her into not telling her parents. With respect to Mast's character, the court noted that Mast had been raised in an Amish community with a strong support network, that his employment consisted largely of farming and carpentry work, that he had problems with alcohol and with depression, that he had five prior convictions for sexual offenses involving minor girls that demonstrated a pattern of behavior, and that he minimized his offenses. The court concluded that a prison term was necessary due to the severity of the offense.

The court then sentenced Mast to fifteen years of initial confinement and ten years of extended supervision, concurrent to a Missouri sentence. It also awarded 135 days of sentence credit; imposed a no-contact order and standard costs and conditions of supervision; directed Mast to provide a DNA sample and pay the fee; and determined that Mast was not eligible for the challenge incarceration program or the earned release program, and that a risk reduction sentence would not be appropriate.

The sentence imposed was within the applicable penalty range. *See* WIS. STAT. §§ 948.025(1)(b) (classifying repeated sexual assault, if less than first-degree, of a child between the ages of 13 and 15 as a Class C felony); 939.50(3)(c) (providing maximum imprisonment term of 40 years for Class C felonies); and 973.01 (explaining bifurcated sentence structure) (all 2003-04 statutes). The sentence was not “so excessive and unusual and so disproportionate to the offense committed” as to be unduly harsh. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted). Whether Mast serves his concurrent sentences in Wisconsin or Missouri is not a topic addressed in the judgment of conviction, and it is up to the Wisconsin Department of Corrections, not this court, to decide.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Faun Moses is relieved of any further representation of Chester Mast in this matter pursuant to WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*