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DISTRICT II

April 24, 2013

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

2012AP2755-CRNM State of Wisconsin v. Adam D. Willman (L.C. #2011CF152)

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

Adam D. Willman appeals from a judgment convicting him of second-degree sexual assault of a child. Willman'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). Willman 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 mandated by ***Anders***, we

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

conclude that this appeal may be disposed of summarily. *See* WIS. STAT. RULE 809.21. We affirm the judgment and relieve Attorney Hannah B. Schieber of further representing Willman in this matter.

Willman engaged in sexual contact with a thirteen-year-old child who he knew through family. He pled guilty to one count of second-degree sexual assault of a child. He was sentenced to four years of initial confinement followed by four years of extended supervision. A notice of intent to pursue postconviction relief requesting appointed appellate counsel was filed by his trial counsel on March 6, 2012. This no-merit appeal follows.

The no-merit report first considers whether Willman's guilty plea was knowingly, voluntarily and intelligently entered. The record, when viewed as a whole, shows that the requirements of WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, were met.[2]

As appellate counsel observed, the circuit court did not explicitly mention the ability to subpoena witnesses, *see* ***Brown***, 293 Wis. 2d 594, ¶35, but it did discuss Willman's right to "look at the witnesses" and cross-examine them. Furthermore, the court verified that Willman had signed and reviewed the plea questionnaire form, which lists the right to use subpoenas to require witnesses to come to court and testify. While a plea questionnaire does not eliminate the need for the circuit court to make a record of a defendant's understanding, it does "lessen the

[2] The court did not expressly advise Willman of potential deportation consequences if he is a non-citizen. *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). Willman checked his understanding of that consequence on his plea questionnaire, however, and his presentence investigation report indicates that he was born in Wisconsin. We conclude that this issue has no arguable merit.

extent and degree of the colloquy otherwise required." ***State v. Hoppe,*** 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794. Under the circumstances, we see no issue of arguable merit here.

Williston's counsel points out that the circuit court failed to explain during the colloquy that the circuit court was not bound by any plea agreement. *See* ***Brown***, 293 Wis. 2d 594, ¶35. However, in this case there was no agreement as to length of recommended sentence. In ***State v. Johnson***, 2012 WI App 21, ¶¶12-13, 339 Wis. 2d 421, 811 N.W.2d 441, we explained that even if the circuit court fails to explain that it is not bound by any plea agreement, a defendant cannot demonstrate a violation of his constitutional rights if the court accepts the plea bargain. In this case, there is no arguable deviation from any plea bargain and therefore no arguable basis for Willman to withdraw his plea.

Finally, our review of the record does not show that the circuit court specifically informed the defendant that an attorney might discover defenses or mitigating circumstances that would not be apparent to a layman. *See* ***Brown***, 293 Wis. 2d 594, ¶35. However, Willman was represented by counsel when he made the plea agreement and he acknowledged at the plea hearing that counsel had gone over the plea questionnaire with him. The record reflects that an order appointing counsel was filed April 20, 2011, five days after the complaint. This plea colloquy requirement is primarily for the benefit of defendants who are not already represented, so there would be no arguable merit to an argument for plea withdrawal on this basis.

The second issue addressed in counsel's report is the circuit court's exercise of sentencing discretion. Sentencing is left to the discretion of the circuit 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 reasonable manner, and provided a thorough, rational explanation for imposing the sentence it did. The court considered the gravity of the offense, noting that "[t]his is, in the lexicon of penalties … one of the most serious." The court also noted Willman's age, criminal history, family history, and a pending charge in another state. The circuit court explicitly acknowledged its responsibility to protect the public and the victim. It also explained how its sentence fit those objectives. It rejected probation and explained that its intention was to impose a sentence long enough to allow Willman to participate in sex offender treatment in prison. Considering the maximum penalty of twenty-five years of initial confinement followed by fifteen years of extended supervision, we cannot conclude that the imposed sentence—four years of initial confinement followed by four years of extended supervision—is excessive. *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 Hannah B. Schieber is relieved from further representing Willman in this matter.

Diane M. Fremgen
Clerk of Court of Appeals