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DISTRICT II

May 8, 2013

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

2013AP287-CRNM State of Wisconsin v. Justin M. Conwell (L.C. # 2009CF1304)

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

Justin Conwell appeals from a judgment convicting him of second-degree sexual assault of a child. Conwell's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Conwell received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Conwell's plea of guilty was knowingly, intelligently, and voluntarily entered² and (2) whether the circuit court erroneously exercised its discretion at sentencing.

With respect to the entry of the guilty plea, the record shows that the circuit court engaged in a colloquy with Conwell that satisfied the requirements of WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14.³ In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Conwell's guilty plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing a sentence of sixteen years of imprisonment, the court considered the

² Conwell entered his guilty plea after a day and a half of a jury trial.

³ There are a few exceptions to this. For example, the circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Conwell's plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2). The court also failed to inform Conwell of all of the constitutional rights he was waiving and the maximum penalty to which he was subjecting himself. These failures also do not present potentially meritorious issues for appeal, as this information was clearly set forth in Conwell's signed plea questionnaire and waiver of rights form. The circuit court explicitly referenced that form during the plea colloquy and confirmed that Conwell understood its contents before signing it. Moreover, counsel indicates in his report that Conwell never told him that he did not understand the plea or otherwise felt that it was anything other than informed and voluntary. Conwell does not contest this statement.

seriousness of the offense, Conwell's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the vulnerability of the victim and the effects the crime had on her, the court's decision does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Michael S. Holzman of further representation in this matter.

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 Michael S. Holzman is relieved of further representation of Conwell in this matter.

Diane M. Fremgen
Clerk of Court of Appeals