



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
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 8, 2013

To:

Hon. Patrick C. Haughney
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Steven Patrick Cotter
Law Office of Steven P. Cotter
8112 W. Bluemound Road, Suite 61
Milwaukee, WI 53213-3356

Brad Schimel
District Attorney
515 W. Moreland Blvd.
Waukesha, WI 53188-0527

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

Brian A. Lawrence 564721
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2013AP66-CRNM State of Wisconsin v. Brian A. Lawrence (L.C. # 2010CF461)

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

Brian A. Lawrence appeals from a judgment convicting him of second-degree sexual assault of a child. Lawrence'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). Lawrence filed a response. After reviewing the record, counsel's report, and Lawrence's response, we conclude

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

that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Lawrence’s plea of no contest was knowingly, intelligently, and voluntarily entered;² and (2) whether the circuit court erroneously exercised its discretion at sentencing.

With respect to the entry of the no contest plea, the record shows that the circuit court engaged in a colloquy with Lawrence 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. 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 Lawrence’s no contest 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 thirty years of imprisonment, the court considered the seriousness of the offense, Lawrence’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 effects the crime had on the victim, 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).

² Although counsel describes Lawrence’s plea as a guilty plea, it was actually one of no contest.

Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

As noted, Lawrence filed a response to counsel's no-merit report. The response is difficult to decipher, as it is rambling and consists largely of irrelevant information.³ However, it appears that Lawrence's ultimate reason for responding to counsel's report is his desire to "retract" the confession he made to police on the ground that it was involuntary. Prior to the entry of his no contest plea, Lawrence filed a motion to suppress his statement to police. That motion was never ruled on, however, as Lawrence voluntarily withdrew it so that he could accept the State's plea offer. The circuit court confirmed Lawrence's desire to do so in a colloquy on the matter. By voluntarily withdrawing his motion to suppress, Lawrence waived his right to pursue this issue on appeal. See *State v. McDonald*, 50 Wis. 2d 534, 537, 184 N.W.2d 886 (1971) (holding that deliberate abandonment of suppression motion prior to trial constituted waiver); *State v. Woods*, 144 Wis. 2d 710, 716, 424 N.W.2d 730 (Ct. App. 1988) (motion made but not pursued is abandoned). As a result, we are satisfied that Lawrence's response does not present an issue of 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 Steven P. Cotter of further representation in this matter.

³ For example, Lawrence discusses at length the circumstances surrounding a prior allegation of sexual assault involving a different victim in a different case.

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 Steven P. Cotter is relieved of further representation of Lawrence in this matter.

Diane M. Fremgen
Clerk of Court of Appeals