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DISTRICT III

May 21, 2013

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

2013AP219-CRNM State of Wisconsin v. John C. Chynoweth (L. C. #2011CF833)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for John Chynoweth has filed a no-merit report concluding there is no basis to challenge Chynoweth's conviction for sexual assault of a child under sixteen years of age. Chynoweth was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

A criminal complaint alleged Chynoweth had sexual contact with a fourteen-year-old girl at his residence. Chynoweth entered a no contest plea to the charge, and in exchange the State

agreed to recommend six years' probation with ten to twelve months' jail as a condition. The circuit court imposed a sentence consisting of four years' initial confinement and five years' extended supervision, concurrent to a prior sentence.

There is no manifest injustice upon which Chynoweth could withdraw his plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Chynoweth of the constitutional rights he waived by pleading no contest, the elements of the offense, the potential penalty and the deportation consequences. The court specifically advised Chynoweth that it was not bound by the parties' agreement and could impose the maximum penalty. An adequate factual basis supported the conviction. The record shows the plea was knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. The court considered the proper factors, including Chynoweth's character, the seriousness of the offense and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court stated, "I cannot accept the recommendation. You have shown by your past behavior to be a menace to society." The court noted four prior periods of probation, "and you've failed on all four of those. I cannot sit here today and accept a recommendation for probation, albeit a joint recommendation" Any claim that the court's nine-year total sentence was unduly harsh or excessive would lack arguable merit as Chynoweth was facing a maximum penalty of forty years of imprisonment, consisting of twenty-five years' initial confinement and fifteen years' extended supervision, pursuant to WIS. STAT. §§ 948.02(2),

939.50(3)(c), and 973.01(2)(b)3. & (d)2.¹ See *State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Andrew Hinkel is relieved of further representing Chynoweth in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

¹ Reference to Wisconsin Statutes are to the 2011-12 version unless otherwise noted.