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DISTRICT III

June 25, 2013

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

2013AP935-CRNM State of Wisconsin v. Troy A. Stoik (L. C. #2011CF314)

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

Counsel for Troy Stoik has filed a no-merit report pursuant to WIS. STAT. RULE 809.32,¹ concluding no grounds exist for challenging Stoik's conviction for second-degree sexual assault of a child under age sixteen, contrary to WIS. STAT. § 948.02(2). Stoik was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by

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

Anders v. California, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal.

A criminal complaint alleged Stoik drove a twelve-year-old girl to his residence, smoked marijuana with her, and sexually assaulted her. Stoik was charged with first-degree sexual assault of a child under age sixteen, by use of force; first-degree child sexual assault – contact with a child under age sixteen by use or threat of force or violence (actor is eighteen or older); manufacturing or delivery of THC; and possession of drug paraphernalia.

On the date of trial, a jury was selected and sworn in by the court. After voir dire, Stoik indicated he wanted to enter an *Alford*² plea to the State’s offer of second-degree sexual assault of a child. The court informed Stoik that a plea waived all nonjurisdictional defenses and defects. Stoik changed his mind and indicated he wanted a trial.

After the parties presented opening statements, Stoik entered an *Alford* plea to second-degree sexual assault of a child under age sixteen, with all remaining counts dismissed and read in. The court imposed a sentence consisting of ten years’ initial confinement and four years’ extended supervision.

There is no manifest injustice upon which Stoik could withdraw his plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court’s plea colloquy informed Stoik of the elements of the offense, the constitutional rights he waived and the potential penalties that could be imposed. An adequate factual basis supported the conviction.

² Referring to *North Carolina v. Alford*, 400 U.S. 25 (1970).

The court specifically advised Stoik that it was not bound by the parties' agreement and could impose the maximum penalties. 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 plea constitutes a waiver of nonjurisdictional defects and defenses.³ *Id.* at 265-66.

The record also discloses no basis for challenging the court's sentencing discretion. The court considered the proper factors, including Stoik'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 characterized this matter as an extreme case of sexual assault, emphasizing Stoik's age of forty-four and the victim's age of twelve. The court also noted that despite his acknowledgement during the *Alford* plea that there was enough evidence to convince a fact-finder that he was guilty, Stoik continued to deny any wrongdoing and lacked any empathy for the victim. The court stated that Stoik's "explanation as to how the girl's DNA got on his penis does not add up." The court also emphasized Stoik's access to young people as a taxi driver. Stoik faced a maximum of twenty-five years' initial confinement and fifteen years' extended supervision. See WIS. STAT. §§ 948.02(2), 973.01(2)(b)3. and (d)2. The sentence imposed was far less than the maximum allowable and therefore presumptively neither harsh nor excessive. See *State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

³ The no-merit report addresses the circuit court's denial of a motion seeking funding for a defense DNA expert. That issue was waived when Stoik entered his plea.

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

IT IS FURTHER ORDERED that attorney Katie York is relieved of further representing Stoik in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*