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July 17, 2013

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

2013AP11-CRNM State of Wisconsin v. Wesley R. Jones, Sr. (L.C. # 2011CF418)

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

Wesley R. Jones, Sr. appeals from a judgment of conviction for first-degree sexual contact with a person under age thirteen. His 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). Jones has filed a response to the no-merit report. RULE 809.32(1)(e). Upon consideration of these submissions and an independent review of the record, we conclude that the judgment may

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

be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* RULE 809.21.

At the age of sixty-three, Jones was charged with four counts of repeated sexual assault of a child regarding four different victims and at times between 1998 and 2011. Two of the victims were his granddaughters. The victims had spent overnights at Jones's home because of the family type relationship. Pursuant to a plea agreement, Jones entered a guilty plea to an amended charge of first-degree sexual contact with a child under age thirteen. Two other counts were dismissed as read-ins at sentencing and the remaining count was dismissed on the court's own motion.² Jones faced a maximum sentence of sixty years and was sentenced to twenty years' initial confinement and twenty years' extended supervision.

The no-merit report addresses the potential issues of whether Jones's plea was freely, voluntarily and knowingly entered, whether the sentence was the result of an erroneous exercise of discretion, and whether Jones was denied the effective assistance of trial counsel. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.³

² Jones denied having assaulted the victim named in count three of the criminal complaint. The prosecutor explained that the plea agreement called for the dismissal of the three other counts as read-ins but that Jones could maintain his denial of count three at sentencing. In light of the parties' disagreement about the effect of Jones's denial and what arguments could be made at sentencing regarding count three, the circuit court deemed it prudent to dismiss count three outright and indicated that the conduct charged in count three would not be considered for any purpose.

³ During the plea colloquy the circuit court did not give Jones the deportation warning required by WIS. STAT. § 971.08(2). The failure to give the warning is not grounds for relief because there is no suggestion that Jones could show that his plea is likely to result in deportation. *See State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

Prior to entry of his plea Jones filed a motion to suppress statements he made to police and to sever the charges. The motions were not ruled on because Jones entered a guilty plea. By entry of his guilty plea, Jones elected to abandon the suppression motion, and any potential issues related to his statement have been forfeited. See *State v. Woods*, 144 Wis. 2d 710, 716, 424 N.W.2d 730 (Ct. App. 1988) (motion made but not pursued is abandoned); cf. *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). The record does not suggest that the motions would have been granted or any reason why abandonment of the motions was not justified. Additionally, by his guilty plea Jones forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights.⁴ *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

In his response Jones contends that the charging period in count four, commencing on or about March 1998 and continuing to March 2004, was inaccurate because Jones did not live in Wisconsin until August of 1998. Not only did Jones admit to police and confirm his admission at the plea hearing that he had committed the acts alleged in count four, count four of the complaint was dismissed and the inaccuracy in the charging period is of no consequence.

Jones also suggests that the prosecutor's statement at sentencing that Jones had been dishonorably discharged from the military was inaccurate. He asserts he took an "undesirable" discharge in order to avoid going back to Viet Nam. A defendant has a due process right to be

⁴ WISCONSIN STAT. § 970.02(1)(a) imposes several mandatory duties on the judge at a defendant's initial appearance. *State v. Thompson*, 2012 WI 90, ¶62, 342 Wis. 2d 674, 818 N.W.2d 904. Although these duties were not performed at Jones's initial appearance, any possible claim of error was forfeited by the guilty plea.

sentenced on the basis of accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. To establish a due process violation, the defendant must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing. *Id.*, ¶26. The sentencing court did not mention Jones's military service or discharge information. No merit exists to a claim that the prosecutor gave inaccurate information at sentencing because the court did not rely on the alleged inaccurate information.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Jones further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved from further representing Wesley R. Jones, Sr. in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals