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DISTRICT IV/II

July 24, 2013

To:

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

2013AP1117-CRNM State of Wisconsin v. Charles Lee Alexander (L.C. #2011CF2794)

Before Brown, C.J., Reilly and Gundrum, JJ.

Charles Lee Alexander appeals from a judgment convicting him of sexual assault of a child by a foster parent. Alexander'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). Alexander received a copy of the report, was advised of his right to file a response, and has elected not to do

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

so. After 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* RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Alexander's no contest plea was knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether Alexander was afforded effective assistance of counsel.

With respect to the entry of the no contest plea, the record shows that the circuit court engaged in a colloquy with Alexander 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. The court referred to that form when discussing the constitutional rights Alexander was giving up by entering his plea. This was permissible under *State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987). Although Alexander disputed some of the details in the criminal complaint, he admitted to the elements of the offense. Accordingly, we agree with counsel that any challenge to the entry of Alexander'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 (citation omitted). In imposing a sentence of twenty-five years of imprisonment, the court considered the seriousness of the offense, Alexander'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 who was

cognitively disabled 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.²

Finally, with respect to whether Alexander was afforded effective assistance of counsel, there is nothing in the record to suggest that Alexander’s trial counsel was ineffective. Indeed, at the plea hearing, Alexander indicated that he was satisfied with his counsel’s representation. Consequently, we conclude that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

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 Gina Frances Bosben 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.

² In reviewing Alexander’s sentence, we note that the circuit court erroneously found that he was eligible for both the Challenge Incarceration Program and the Earned Release Program. Alexander cannot participate in either program because of the crime of which he was convicted. *See* WIS. STAT. § 973.01(3g) and (3m). The judgment of conviction was subsequently amended to reflect this fact. The circuit court’s erroneous finding does not present a potentially meritorious issue for appeal because the court did not rely on Alexander’s eligibility in these programs when fashioning its sentence.

IT IS FURTHER ORDERED that Attorney Gina Frances Bosben is relieved of further representation of Alexander in this matter.

Diane M. Fremgen
Clerk of Court of Appeals