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DISTRICT III

November 17, 2015

To:

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

2015AP1694-CRNM State of Wisconsin v. Benjamin W. Lahti (L. C. No. 2013CF51)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Benjamin Lahti has filed a no-merit report concluding there is no arguable basis for Lahti to withdraw his no contest plea or challenge the sentence imposed for one count of child enticement. Lahti was advised of his right to respond to the report 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 basis for appeal.

The complaint charged Lahti with possession of drug paraphernalia, using a computer to facilitate a sex crime, and exposing a child to harmful material. In the information the State dismissed the harmful material charge and added a child enticement charge. According to the

complaint, an officer was informed that Lahti had been corresponding with a person in another jurisdiction who Lahti believed was a fifteen-year-old girl, and had made arrangements to meet with her at a restaurant. When Lahti arrived at the restaurant, the officer asked Lahti if he knew why the officer was having contact with him, and Lahti responded, "it was because of the 15 year old girl he was chatting with and supposed to meet up with." Lahti admitted sending naked pictures of himself to the supposed child. He was then arrested, and a search of his car uncovered a pipe and cigarette papers. At the police department, Lahti made further incriminating statements after being read his ***Miranda***[1] rights.

Lahti filed a motion to suppress statements he made at the restaurant and at the police department. The circuit court properly denied the motion. Lahti was not in custody at the time he made the incriminating statements at the restaurant. ***Miranda*** warnings are only required when a person is taken into custody. ***State v. Morgan***, 2002 WI App 124, ¶10, 254 Wis. 2d 602, 648 N.W.2d 23. A person is in custody when he or she is deprived of freedom of action to a degree associated with formal arrest. ***Id.*** The officer had not stopped Lahti's vehicle, had not drawn his weapon, and did not conduct a pat-down search or place Lahti in handcuffs. Therefore, Lahti's ***Miranda*** rights were not implicated at that point. At the police department, Lahti was informed of his ***Miranda*** rights and waived them before making any incriminating statements.

The record discloses no arguable manifest injustice upon which Lahti could withdraw his no contest plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986).

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Pursuant to a plea agreement Lahti pled no contest to child enticement and the State dismissed and read in the crimes of possessing drug paraphernalia and using a computer to facilitate a sex crime. Aided by a Plea Questionnaire and Waiver of Rights form with attached jury instructions, the court informed Lahti of the elements of the offense, the potential penalties and the constitutional rights he waived by pleading no contest. As required by ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Lahti it was not bound by the parties' plea agreement. Lahti assured the court that medication he was taking did not interfere with his ability to understand the proceedings. Although the court did not provide the deportation warning required by WIS. STAT. § 971.08(1)(c) (2013-14), that error is harmless because documents in the record indicate Lahti was born in the United States. The record shows the plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentence. The court withheld sentence and placed Lahti on probation for five years with one year in jail as a condition of probation. The court appropriately considered the seriousness of the offense, Lahti's character and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The sentence is not arguably so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Eileen Hirsch is relieved of her obligation to further represent Lahti in this matter. *See* WIS. STAT. RULE 809.32(3) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals