



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

November 20, 2015

To:

Hon. Julie Genovese
Circuit Court Judge, Br. 13
Dane County Courthouse
215 South Hamilton, Rm. 8103
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 South Hamilton, Rm. 1000
Madison, WI 53703

Matthew Moeser
Asst. District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

William E. Schmaal
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Joshua P. Drabek 581610
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2014AP2113-CRNM State of Wisconsin v. Joshua P. Drabek (L.C. # 2012CF2344)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Attorney William Schmaal, appointed counsel for Joshua Drabek, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹.and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Drabek's plea or sentencing. Drabek was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Drabek was charged with two counts of sexual assault of a child, two counts of felony bail-jumping, and one count of repeated sexual assault of the same child. Pursuant to a plea agreement, Drabek pled guilty to repeated sexual assault of the same child and the remaining counts were dismissed and read-in for sentencing purposes, and Drabek's cash bail in this case and a separate case was reverted to a signature bond pending sentencing. The circuit court sentenced Drabek to two years of initial confinement and two years of extended supervision, consecutive to Drabek's sentence in another case.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Drabek's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Drabek signed, satisfied the court's duty to establish information such as Drabek's understanding of the nature of the charge, the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Drabek's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Drabek's sentence. A challenge to a circuit court's exercise of its sentencing discretion must

overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense, Drabek's individual character and rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was well within the maximum Drabek faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no erroneous exercise of the court's sentencing discretion or any other basis to challenge the sentence imposed by the circuit court.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Schmaal is relieved of any further representation of Drabek in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals