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DISTRICT III

June 28, 2016

To:

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

2015AP2349-CRNM State of Wisconsin v. Michael S. Theabo (L. C. No. 2014CF410)

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

Counsel for Michael Theabo filed a no-merit report concluding there is no arguable basis for Theabo to withdraw his no-contest plea or challenge the sentence imposed for first-degree sexual assault of a child under the age of thirteen. Theabo 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 alleged Theabo had sexual contact with a seven-year-old child. Theabo entered a no-contest plea in return for the State's agreement not to pursue five other offenses disclosed by the victim. The circuit court accepted the plea and imposed a sentence of eleven years' initial confinement and nine years' extended supervision.

The record discloses no arguable manifest injustice upon which Theabo could withdraw his no-contest plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, supplemented by a Plea Questionnaire and Waiver of Rights form with attached jury instructions, informed Theabo of the constitutional rights he waived by pleading no contest, the elements of the offense, and the potential penalties. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court notified Theabo its sentencing options were not limited to the parties' recommendations. The court advised Theabo of the direct consequences of his plea, including the loss of his rights to vote and possess a firearm. The court gave the deportation warning required by WIS. STAT. § 971.08(1)(c) (2013-14), and *State v. Douangmala*, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1. The complaint served as the factual basis for the plea. The record shows the no-contest plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record also discloses no arguable basis for challenging the sentence. The circuit court could have imposed a sentence totaling sixty years' imprisonment. A sentence well within the maximum is presumed not to be excessive. *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. The court appropriately considered the seriousness of the offense; Theabo's character, including his dishonesty during the investigation; and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984).

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 Erica Bauer is relieved of her obligation to further represent Theabo in this matter. WIS. STAT. RULE 809.32(3) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals