



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 II

October 5, 2016

To:

Hon. Gary R. Sharpe
Circuit Court Judge
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Catherine Malchow
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Criminal Appeals Unit
P.O. Box 7857
Madison, WI 53707-7857

Lucas S. Leffel, #634750
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2016AP1093-CRNM State of Wisconsin v. Lucas S. Leffel (L.C. #2014CF407)

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

Lucas S. Leffel appeals from a judgment of conviction, entered after he pled no contest to three counts of attempted second-degree sexual assault of an unconscious victim. Leffel's counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). The report addresses the validity of the plea and sentence. Leffel has filed a response contending his sentence is too harsh. Upon reviewing the no-merit

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

report and the response and independently reviewing the record as mandated by *Anders*, we agree with counsel's assessment that there are no arguably meritorious appellate issues. We summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

To satisfy a fetish, Leffel entered four different homes on four separate occasions to touch women's buttocks as they slept. He was charged with four counts of burglary of a building or dwelling and four counts of attempted second-degree sexual assault of an unconscious victim. He was found to be competent. He entered not-guilty and NGI pleas. The psychiatrist who evaluated him pursuant to WIS. STAT. § 971.16 found him "not substantially incapable of appreciating the wrongfulness of his action or to conform his conduct to the requirements of the law at the time of the incidents." A second competency evaluation again found him competent.

Leffel pled no contest to three counts of attempted second-degree sexual assault of an unconscious victim; the remaining five counts were dismissed and read in. The court sentenced him to six years' initial confinement (IC) and four years' extended supervision (ES) on each count, consecutive, for a total of eighteen years' IC and twelve years' ES. This no-merit appeal followed.

The record discloses no arguable basis for withdrawing Leffel's no-contest pleas. The court's plea colloquy, supplemented by a plea questionnaire and waiver-of-rights form that Leffel completed and signed, informed Leffel of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering a no-contest plea. The court advised Leffel of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), and of the possibility that he will be subject to WIS. STAT. ch. 980, and confirmed his understanding that the court was not bound by the terms of the plea agreement. *See State v.*

Hampton, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14. The court also found that a sufficient factual basis existed in the criminal complaint to support Leffel’s plea. Although his competency was evaluated twice, both times he was found competent to proceed, and there is no indication that he did not understand his plea. The record shows it was knowingly, voluntarily, and intelligently made. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record likewise discloses no arguable basis for challenging the sentence imposed. The court considered the seriousness of the offense, noting that it caused the victims to “los[e] their perspective of safety, of well-being, of security in their community [and] in their own homes.” It considered Leffel’s character, including that he abused alcohol and pornography and played out his “bizarre, perverse fantasy” without regard for the impact on the victims. It considered the protection of the public, stating that there is a need to punish and for safety, as his behavior “caused significant impact and hurt to members of the community.” It also considered mitigating factors Leffler raised, such as his Asperger’s and ADHD, and that he was a victim of sexual abuse himself as a child. See *State v. Gallion*, 2004 WI 42, ¶¶40, 43, 270 Wis. 2d 535, 678 N.W.2d 197.

Leffel asserts in his response that he “know[s] [he] deserve[s] to be [in prison] but the amount of time is way too much of a punishment,” as he is “a good person” who simply “made a mistake.” Pointing out that he did not hurt anyone, Leffel also complains that there are other inmates who committed worse crimes than he but got lesser sentences.

Leffel faced a maximum penalty of twenty years’ imprisonment—a maximum of twelve and a half years’ initial confinement plus seven and a half years’ extended supervision—on each count, for a total maximum term of sixty years. The court imposed a total thirty years’

imprisonment, fully explaining its rationale for doing so. Under these circumstances, it cannot reasonably be argued that Leffel's sentence is so excessive as to shock public sentiment. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.).

"[I]ndividualized sentencing is a cornerstone to Wisconsin's system of indeterminate sentencing." *State v. Lechner*, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998). "[N]o two convicted felons stand before the sentencing court on identical footing. The sentencing court must assess the crime, the criminal, and the community, and no two cases will present identical factors." *In re Judicial Admin. Felony Sentencing Guidelines*, 120 Wis. 2d 198, 201, 353 N.W.2d 793 (1984). We see no basis to disturb the sentence imposed.

An independent review of the record discloses no other potential issues for appeal.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved of further representing Leffel in this matter.

Diane M. Fremgen
Clerk of Court of Appeals