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October 19, 2016

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

2016AP410-CRNM State of Wisconsin v. Jimmy Lee Williams (L.C. # 2014CF1009)

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

Jimmy Lee Williams appeals from a judgment convicting him of second-degree sexual assault of a child. Williams' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Williams filed multiple responses. Counsel then filed a supplemental no-merit report. After reviewing the record,

[1] All references to the Wisconsin Statutes are to the 2013-14 version.

counsel's reports, and Williams' responses, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT RULE 809.21.

In January 2015, Williams pled no contest to second-degree sexual assault of a child. The charge stemmed from an allegation that he forced his then fifteen-year-old daughter to have penis-to-vagina intercourse in the backseat of his car. Pursuant to a plea agreement, the State agreed to dismiss and read-in thirteen additional counts at sentencing.[2]

Prior to sentencing, Williams obtained new counsel and moved to withdraw his plea. Among other things, he accused his old trial counsel of mistakenly advising him that, notwithstanding the plea, Williams could appeal an adverse evidentiary ruling regarding the admissibility of evidence under ***State v. Pulizzano***, 155 Wis. 2d 633, 456 N.W.2d 325 (1990).[3]

Following a hearing on the matter, the circuit court found that there was a fair and just reason for withdrawing the plea based upon counsel's mistaken advice. However, Williams subsequently withdrew his motion, citing the beneficial nature of his plea agreement. His new trial counsel explained:

> Mr. Williams had the weekend to think about it. And Mr. Williams decided that he wishes to maintain his plea despite the court now deciding that he'd be entitled to withdraw it for the good reasons the court mentioned.

[2] The additional counts involved Williams' daughter and one other child victim. They included four counts of incest with a child, three counts of repeated sexual assault of a child, two counts of sexual assault of a child under thirteen years of age, one count of first-degree sexual assault of a child, one count of kidnapping, one count of child enticement, and one count of incest.

[3] Williams had filed a motion seeking to present evidence of his daughter's prior sexual conduct pursuant to ***State v. Pulizzano***, 155 Wis. 2d 633, 456 N.W.2d 325 (1990). The circuit court denied the motion on grounds of relevancy.

> So my client at this point understands that he won't be able to appeal the court's [evidentiary] ruling, and he wants to proceed on the negotiated disposition….
>
> ….
>
> Mr. Williams is making this decision because the second-degree sexual assault that he pled to does not – obviously one count of second carries a lot less than 13 or 14 counts as recited in the complaint.
>
> And the second degree doesn't carry a mandatory period of incarceration whereas at least one of the 14 charged does.

After confirming with Williams his desire to keep his plea agreement and ensuring that the decision was voluntary, the circuit court scheduled the matter for sentencing. Ultimately, the court sentenced Williams to thirty years of imprisonment, consisting of twenty years of initial confinement followed by ten years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Williams' no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Williams that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. 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 rights Williams was giving up by entering his plea. This was permissible under ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that a challenge to the entry of Willams' no contest plea based on the circuit court's colloquy would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing 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 making its decision, the court considered the seriousness of the offense, Williams' 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 Williams' relationship with the victim, his prior criminal record, and the read-in offenses, the sentence imposed 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). We agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

As noted, Williams filed multiple responses to the no-merit report. In them, he appears to make several arguments: (1) that the circuit court erred in denying his motion to present evidence pursuant to ***Pulizzano***; (2) that the criminal complaint was defective, depriving the circuit court of subject matter jurisdiction; (3) that his new trial counsel pressured him into keeping the plea agreement; and (4) that the sentencing process was flawed because his private presentence investigator included false evidence in her report.

With respect to Williams' first issue, he forfeited the ability to challenge the circuit court's evidentiary ruling by virtue of his no contest plea. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (a valid plea forfeits all nonjurisdictional defects, including constitutional claims). The record makes clear that Williams' was aware of this forfeiture at the time he decided to keep his plea agreement.

With respect to Williams' second issue, again, he forfeited the ability to challenge the complaint by virtue of his no contest plea. ***Id.*** Moreover, a circuit court lacks criminal subject matter jurisdiction only when the complaint does not charge an offense known to law. ***State v.***

Aniton, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). Here, the offenses contained in Williams' complaint are plainly known to law.

With respect to Williams' third issue, there is no evidence that his new trial counsel pressured him into keeping the plea agreement. Indeed, the record shows that Williams voluntarily chose to proceed with the agreement because its terms were beneficial to him. Although Williams now claims that his trial counsel assured him that the circuit court "would go easy on him" if he kept his plea, Williams knew that there was no guarantee of this. Before accepting his plea, the circuit court advised Williams that it could impose up to forty years of imprisonment, and Williams confirmed his understanding of this fact.

Finally, with respect to Williams' fourth issue, he alleges that his private presentence investigator presented false evidence in her report. Principally, he complains about the statements in the report that are attributed to three of his family members. Williams has filed letters from the family members who deny speaking to the investigator. The investigator, in turn, has filed a sworn affidavit, confirming that she spoke to each of the family members by telephone.

It is difficult to imagine that the investigator would fabricate the rather specific statements made by each of Williams' family members in her report. However, we need not resolve the parties' factual dispute to determine that this issue, like the others raised by Williams, lacks arguable merit. As noted by appointed counsel, the disputed information contained in the report did nothing whatsoever to prejudice Williams. Indeed, the statements in question portray him as a decent, reliable, and hard-working father and son.

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 reports and relieve Attorney Thomas J. Erickson 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.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representation of Williams in this matter.

Diane M. Fremgen
Clerk of Court of Appeals