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DISTRICT III

September 11, 2018

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

2016AP1031-CRNM State of Wisconsin v. Eugene J. Turner (L. C. No. 2015CF672)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for Eugene Turner has filed a no-merit report concluding no grounds exist to challenge Turner's convictions for one count each of child enticement and second-degree sexual assault of a child under the age of sixteen. Turner was informed of his right to file a response to the no-merit 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 merit

to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2015-16).[1]

The State charged Turner with two counts of child enticement and two counts of second-degree sexual assault of a child, all counts involving encounters with then fifteen-year-old M.M. during the "Spring of 2014." In exchange for his guilty pleas to one count of child enticement and one count of second-degree sexual assault of a child, the State agreed to dismiss and read in the remaining counts. Out of a maximum possible sixty-five-year sentence, the court imposed concurrent twenty-year sentences consisting of ten years' initial confinement followed by ten years' extended supervision.

The record discloses no arguable basis for withdrawing Turner's guilty pleas. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Turner completed, informed Turner of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering guilty pleas. The court confirmed that Turner understood 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, and advised Turner of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). The court also confirmed that medications Turner had taken for "mental health issues" did not interfere with his ability to understand the proceedings. Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Turner committed

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

the crimes charged. The record shows the pleas were knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The judgment of conviction reflects a $500 DNA surcharge for the two felony convictions. *See* WIS. STAT. § 973.046(1r) (requiring a circuit court to impose a $250 surcharge for each felony conviction). Because of the multiple DNA surcharges, we previously put this appeal on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. Odom asserted the surcharge was punitive when assessed on a per-count basis against a defendant with multiple convictions and was, therefore, part of the "potential punishment" a circuit court must ensure a defendant understands when he or she enters a plea. The ***Odom*** appeal, however, was voluntarily dismissed before oral argument. This case was then held pending a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. In ***Freiboth***, we determined that on taking a plea, the court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is, therefore, not a direct consequence of the plea. ***Id.***, ¶12. In light of the holding in ***Freiboth***, there is no arguable merit to a claim for plea withdrawal based on the assessment of multiple mandatory DNA surcharges.

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offenses; Turner's character, including his criminal history; the need to protect the public; and the mitigating factors Turner raised. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. There is a presumption that Turner's sentence, which is well within the

maximum allowed by law, is not unduly harsh or unconscionable, nor "so excessive and unusual" as to shock public sentiment. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507; *see also* ***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 pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Philip J. Brehm is relieved of further representing Eugene Turner in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals