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DISTRICT IV

December 18, 2025

To:

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Circuit Court Judge
Electronic Notice

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

2023AP1020-CRNM State of Wisconsin v. Jeffrey N. Grimes (L.C. # 2019CF1358)

Before Graham, P.J., Blanchard, and Kloppenburg, 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).

Attorney Gabriel Houghton has filed a no-merit report seeking to withdraw as appellate counsel for Jeffrey Grimes pursuant to WIS. STAT. RULE 809.32 (2023-24)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Grimes filed a response to the report, raising several issues that he asserts are grounds for appeal. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

Grimes was charged with incest in violation of WIS. STAT. § 948.06(1), child enticement with intent to expose a sex organ to the same child as in the incest charge in violation of WIS. STAT. § 948.07(3), and exposing genitals to the same child in violation of WIS. STAT. § 948.10(1). According to the criminal complaint, Grimes repeatedly sexually abused his sixteen-year-old nephew, L.M.,[2] over a period of ten months, including subjecting him to sexual intercourse. L.M. reported that the first abuse occurred after L.M. confided some personal information to Grimes and that Grimes "had sex with him." L.M. recounted several incidents in detail and reported that "oral sex and sex took place multiple other times" before L.M. told his father about it. Several months after filing the complaint in this case, the State charged Grimes in a separate case with ten counts of possession of child pornography in violation of WIS. STAT. § 948.12(1m). Grimes was then also facing a child pornography case in Florida.

In a package deal addressing the two Wisconsin cases, Grimes pled guilty to the charge of child enticement in exchange for the State's dismissal of both the incest and exposing genitals

[2] To protect the privacy of the victim, we refer to the victim using initials that do not correspond to his real name. *See* WIS. STAT. RULE 809.86.

charges in this case and also the separate Wisconsin child pornography case.[3] The charges were dismissed outright and not read in for sentencing purposes.

At the plea hearing, the circuit court asked Grimes to explain in his own words what happened as a factual basis for the child enticement offense. Grimes responded that "[t]he way the complaint states it is adequate." Then he added that he "apparently" "got [L.M.] to enter into a bedroom with [him] and, ah, got naked from the waist down," meaning that Grimes took off his clothing below the waist. Grimes confirmed that his intent in getting L.M. to go into the bedroom was for a sexual purpose. The court questioned Grimes about his use of the word "apparently," and Grimes responded that this had no meaning but was merely his "manner of speaking." The parties stipulated that the court could rely on the complaint, on Grimes's statements at the plea hearing, and on the preliminary hearing testimony as a factual basis for the plea, and the court found Grimes guilty of child enticement.

The circuit court then ordered a pre-sentence investigation ("PSI"), saying:

> [The] charge in Florida that had to do with children … combined with … the other counts here that I will be dismissing, Counts 1, 3 in this case and then [the separate Wisconsin child pornography case], all lead me to believe that I need to know a little more about Mr. Grimes.

[3] In his response to the no-merit report, Grimes repeatedly states that "there was no plea bargain" in his case and asserts that "all charges were dismissed under prosecutorial discretion and separate of a plea bargain." The record belies this assertion, regardless of whatever significance the distinction could have. At the plea hearing, the prosecutor explained the State's "understanding" that Grimes would plead guilty to the enticement charge and the prosecutor would "then move to dismiss Counts 1 and 3 as well as the entirety of the counts in [the separate child pornography case]." Defense counsel confirmed that this was the agreement and that there was no "other agreement" about sentencing. Grimes himself confirmed that this was his understanding "of the agreement" both at the plea hearing and by signing the plea questionnaire that described the same exchange. In sum, the record shows that Grimes entered a plea as part of "[a] negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser charge or to one of multiple charges in exchange for some concession from the prosecutor," which is the definition of a "plea bargain." *See Plea Bargain*, BLACK'S LAW DICTIONARY (12th ed. 2024).

The circuit court explained to Grimes that a PSI is a "report that's written by a Wisconsin probation agent who goes over the criminal complaint, talks to [the defendant], gets [the defendant's] side of the story, sometimes talks to the victim to get the victim's side of the story," and includes background information gathered from various other sources. Grimes's trial counsel said that he was "inclined to advise Mr. Grimes that he should not be discussing the facts [of the Florida case] and likely not of … this case either." The court expressed sympathy for Grimes not discussing the Florida case because it was still pending, but the court said that it was "confused" about why Grimes would not discuss the facts of this case. The court went on to say, "[I]t's your strategic decision to have your client speak or not speak about, quite frankly, anything, but then I'm left only with what they say," meaning what others might say that could include aggravating allegations.

Grimes asserts that trial counsel did not review the PSI with him prior to sentencing but simply told him that it was a "hit piece."

The PSI included a reference to a juvenile (other than L.M.) who, according to Grimes's family, developed an online relationship with Grimes, then ran away from home and lived with Grimes in Florida for some time. At the sentencing hearing, trial counsel called this reference "an ambush tactic almost … imply[ing] that he has other victims." The circuit court asked whether Grimes would like a continuance to allow the parties to obtain further information, including this individual's contact information, "and resolve any negative implications from the State or the PSI," although the court cautioned that it was "not going to look good" for Grimes if the individual told the detective who would be contacting the individual that "bad things happened." Grimes accepted the invitation for the continuance.

A second sentencing hearing was held a week later. The State included in its submissions a report of a detective's interview of the individual. The individual reported that he had been taken in by Grimes approximately twenty years earlier as a runaway sixteen-year-old. According to the prosecutor, Grimes began an online relationship with the boy by pretending to be an older woman and asked the boy for nude images of himself before the boy learned that Grimes was a man. The boy quit school and went to live with Grimes who, he said, "liked him in a weird way." The individual told the detective that the individual was "drinking and smoking a lot during this time," that there were "a number of instances that he doesn't really remember," and that he "hoped that Jeffrey Grimes was ready to deal with the consequences of his actions." The prosecutor argued that this report helped form a pattern in which Grimes "solicit[ed] photographs of nude teenage boys going back twenty years," and the prosecutor also stressed L.M.'s account of the incidents underlying the charges in this case. The prosecutor argued for a sentence of ten years' initial confinement and ten years' extended supervision.

Defense counsel urged the circuit court not to consider the State's references to unresolved cases, Grimes's conduct underlying the dismissed counts, or the interview described above in which, as counsel pointed out, the individual never explicitly alleged that Grimes touched or assaulted him.

The court addressed Grimes directly, telling him, "[Y]ou have the right to speak on your own behalf. You do not have to. But if there is something you would like to say, this would be the time to say it." Grimes expressed "total remorse for anything in [his] actions that are considered to have harmed [L.M.] here." He said that "not one time did any of these investigators or anyone else ever think to ask [him] for [his] side of the story in these things," apparently referring to the runaway who lived with him. Later, he said that no one had ever

asked "for [his] side of this" regarding his family and his nephew. He invited the court, "if [it had] a question," to "please ask," saying, "I don't know how you're going on the information you have."

The circuit court noted Grimes's apology "for anything that would have hurt [L.M.]" The court asked Grimes, "What do you believe hurt [L.M.]?" Grimes responded that he was sorry that he had not immediately divulged to his sister, L.M.'s mother, some things that L.M. had told him in confidence. The court pursued the topic further: "And how did that hurt [L.M.]? … [W]hat are you apologizing for that hurt [L.M.]?" Grimes said that he didn't "know how to answer that question without denigrating [L.M.]" The court asked, "Is there anything of your conduct that you're apologizing for that would have hurt [L.M.]?" Grimes gave an unclear response and then seemed to lose his train of thought. The court asked whether he was "apologizing for not informing [L.M.]'s parents about a secret that [L.M.] entrusted [him] with," and Grimes appeared to respond in the affirmative, saying that he would have saved himself "a world of trouble" if he had "just violated" the "trust" that L.M. had placed in Grimes "and told them."

The circuit court noted that, despite Grimes's admission at the plea hearing that he was guilty of child enticement, he did not mention (let alone apologize for) any of his own conduct, other than for failing to disclose information to L.M.'s mother that he said he should have shared with her. The court accurately summarized the factors that it was required to consider in sentencing and discussed L.M.'s allegations at length. The court determined that the conduct at issue, including Grimes's sexual contact described by L.M., constituted a grave offense. In considering Grimes's character, the court noted that, despite Grimes's complaints about not being asked for his side of the story, Grimes failed to respond to the court's questions about his

own conduct and never took responsibility for anything other than failing to disclose information that he said should have been shared with L.M.'s mother, which had "nothing to do with what [he was] charged with and what [he had] admitted to doing."[4] The court concluded that Grimes was "unapologetic for exposing [him]self to [L.M.], having [L.M.] expose himself to [Grimes], … and having sex with a sixteen-year-old." Regarding the need to protect the public, the court mentioned Grimes's conduct toward both L.M. and the individual who had lived with him as a runaway. Further, the court noted that the Static-99R, a risk assessment tool, indicated an "above-average risk for recidivism." The court imposed a sentence of seven years of initial confinement followed by ten years of extended supervision.

With Houghton as his new counsel, Grimes filed a postconviction motion. He argued that the circuit court erroneously exercised its discretion in relying on a dismissed charge to determine the gravity of the offense and in placing "undue weight [on] what it called Mr. Grimes's 'character for concealment.'" Counsel also argued that the court erred in relying on the Static-99R calculation of risk of recidivism, because the score was based on Grimes's age as of the time of assessment rather than as of his mandatory release date in the future. The court determined that it had relied on an incorrect score on the Static-99R and that this constituted a new factor for sentence modification. The court conducted a third sentencing hearing.

At the third hearing, the circuit court again gave Grimes an opportunity to speak. In attempting to explain his earlier hesitancy and lack of clarity regarding his conduct, Grimes said, "I just know you don't talk about something you're not charged with." He then said that the

[4] The court also noted that the PSI writer had asked Grimes for a detailed description of the offense and that Grimes indicated to the PSI writer that this "was described in enough detail at the plea hearing."

conduct underlying his plea was only one event. The court asked him to describe that one event. He responded in a somewhat disjointed manner, saying that the event was that Grimes had "quickly changed into my shorts to sleep in.… [A]ll I can figure is I didn't think [L.M.] saw it as a come-on at the time. And I told you at the time I don't know what I was thinking, if I had a sexual—I don't know. I can't say that I didn't, but I don't know." The court pointed out that changing clothes in front of a relative is not illegal in most circumstances and asked Grimes why he entered the plea to the child enticement charge. Grimes answered that he entered the plea for three reasons: his counsel told him they had a deal; counsel was going to "push for time served"; and Grimes "wanted it to be over." Grimes stressed that he was "not trying to withdraw the plea and open all this can of worms up again either." He repeated that he was "not trying to get off and say we want to withdraw plea because we had a bad lawyer or anything."

The circuit court then recounted that, at the plea hearing, Grimes had told the court that "[t]he way the criminal complaint states [the conduct] is adequate" in response to the court's question about what happened. Then, the court went on, Grimes had said that he got L.M. to enter into a bedroom and that Grimes had "got naked from the waist down" for a sexual purpose, which is not simply changing clothes in front of L.M. Grimes said that he responded to the court's questioning at the plea hearing based on his attorney's advice, and that the attorney was caught "flat-footed" when the court asked Grimes for an explanation of the offense. Grimes repeated that he did not want to withdraw his plea.

The circuit court said that it still assessed the gravity of the offense as it had before. "[E]verything that was said at the original sentencing still applies." Based solely on the reduced risk of recidivism associated with Grimes's age, the court decreased the time of extended supervision to nine years.

This no-merit appeal followed, with counsel filing a report and Grimes, in response, raising the issues of the court's compliance with ***State v. Frey***, 2012 WI 99, 343 Wis. 2d 358, 817 N.W.2d 436, and three alleged claims of ineffective assistance of trial counsel. He claims that counsel mischaracterized the effect of dismissed charges, failed to prepare Grimes for sentencing, and failed to review the PSI with Grimes.

The no-merit report first addresses Grimes's plea and asserts that it was knowingly and voluntarily entered. Consistent with the report, our review of the circuit court's plea colloquy shows that the court fulfilled its duty of ensuring that Grimes understood the nature of the charge and the potential punishment he would face if convicted. *See* WIS. STAT. § 971.08(1)(a). In addition, the court informed Grimes of the constitutional rights he was giving up by entering a plea, notified Grimes of the direct consequences of his plea, and ascertained that there was a factual basis to support the plea. *See, e.g.*, ***State v. Hampton***, 2004 WI 107, ¶¶21-24, 274 Wis. 2d 379, 683 N.W.2d 14; ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Although not addressed in the report, Grimes's response asserts that he received ineffective assistance of counsel in connection with his plea when his trial counsel "completely mischaracterized the nature of the dismissed charges in [his] case, telling [him] that [the dismissed charges] were gone completely and that nobody could ask about them or reference them again." As will be discussed below in the context of sentencing, this advice, if it was given as Grimes asserts, reflects an incorrect statement of the law; in fact, the conduct underlying dismissed charges can be considered by a sentencing court under certain circumstances. But even assuming that trial counsel's performance in connection with Grimes's plea was deficient, Grimes's later statements on the record establish that this is not a meritorious ground for appeal.

Returning to the plea context, a defendant who receives ineffective assistance of counsel rendering the defendant's plea involuntary may be entitled to withdraw the plea after sentencing on that basis. ***State v. Bentley***, 201 Wis. 2d 303, 311-12, 548 N.W.2d 50 (1996). A defendant seeking plea withdrawal due to ineffective assistance, however, must establish that counsel's performance was both deficient and prejudicial. *See* ***State v. Mull***, 2023 WI 26, ¶¶35, 37, 406 Wis. 2d 491, 987 N.W.2d 707. In the context of post-sentencing plea withdrawal, the prejudice prong of the test is satisfied only when the defendant shows a reasonable probability that the defendant "would not have pleaded guilty and would have" exercised the right to trial absent counsel's errors. ***Bentley***, 201 Wis. 2d at 312 (quoting ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985)). Here, Grimes repeatedly made clear at his postconviction re-sentencing hearing that he did not want to withdraw his guilty plea based on having a "bad lawyer." In other words, he has taken the unambiguous position on the record that his counsel's advice, even if incorrect, did not affect his decision to plead guilty. Indeed, in his response to the no-merit report, he reiterates that he seeks "a new sentencing, with a new judge" but not the opportunity for a trial. Thus, even assuming that Grimes's counsel performed deficiently before Grimes entered his plea, there is no basis for plea withdrawal. This court is satisfied that nothing regarding the plea provides a non-frivolous ground for appeal.

The no-merit report also addresses sentencing, concluding that the circuit court's sentence was not the result of an erroneous exercise of discretion. The standards on the discretionary issue of sentencing are well established. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, after considering the appropriate factors, the court reached a reasonable result. *See* ***id.***, ¶83 (Wilcox, J., concurring) (noting that, as stated in

McCleary v. State, 49 Wis. 2d 263, 281, 182 N.W.2d 512 (1971), sentences that are explained and rendered in accordance with the appropriate factors are presumptively reasonable).

As described above, the circuit court considered the allegations underlying the dismissed incest charge—namely that, having enticed L.M. into an enclosed space for a sexual purpose, Grimes then had sexual intercourse with L.M., who was his nephew—in determining the gravity of the enticement offense. There is no dispute here that ***Frey***, 343 Wis. 2d 358, applies to a circuit court's use of dismissed charges in sentencing, but Grimes disputes counsel's conclusion that ***Frey*** does not provide a ground for appeal in this case. In ***Frey***, our supreme court stated that its opinion did nothing to alter the "longstanding rule" that "a circuit court may consider dismissed charges in imposing sentence." ***Id.***, ¶5. It explained that this is true regardless of whether the dismissed charges were read in for purposes of sentencing with the defendant's agreement, a distinction that has implications for restitution and immunity from future prosecution. ***Id.***, ¶¶43-44. In fact, as ***Frey*** points out, a sentencing court may consider not only dismissed charges, but facts related to charges for which the defendant has been acquitted. ***Id.***, ¶47. The best practice for a circuit court is to acknowledge and discuss dismissed charges, if they are considered by the court, giving them appropriate weight and describing their relationship to a defendant's character and behavioral pattern, or to the incident that serves as the basis for a plea. The defendant should be given an opportunity to explain or dispute these charges. Open discussion of the charges is consistent with the court's sentencing methodology set out in ***Gallion***, 270 Wis. 2d 535. It creates a record for review. ***Frey***, 343 Wis. 2d 358, ¶54.

Grimes argues that the circuit court "absolutely did not give [him] an opportunity to explain or dispute these charges or allegations." The record belies this argument. The record shows that the court was admirably clear and direct in giving Grimes multiple chances to speak

to the relevant issues before the court imposed sentence. It is relevant that these opportunities came after: the court gave a sensible caution that, if Grimes chose not to provide his version of events, the court would be "left only with what they say"; the prosecutor argued that Grimes had "raped" L.M., making clear that the State considered this conduct to be relevant to sentencing; and the court repeatedly questioned Grimes about the conduct for which he purported to offer an apology of some kind.[5] There is no non-frivolous argument that Grimes was denied the "opportunity to dispute the validity of … dismissed [or] uncharged offenses" considered by the court or that he was taken by surprise that L.M.'s allegations were being considered by the court in determining the sentence. *See* ***id.***, ¶¶103, 106.

To the extent that Grimes intends to raise the issue of ineffective assistance of counsel at sentencing as a basis for an appellate argument, we conclude that the record conclusively shows Grimes could not establish the requisite prejudice to succeed on such a claim. *See* ***Strickland v. Washington***, 466 U.S. 668, 693 (1984). Grimes alleges that counsel failed to meet with him between the plea and sentencing hearings and failed to adequately prepare him for sentencing, and that counsel gave him incorrect advice to the effect that the circuit court would consider only the enticement charge at sentencing. But the circuit court explicitly disabused Grimes of any such notion well before sentence was imposed and in plenty of time for Grimes to take advantage of all mitigating information and to address as best he was able all aggravating information that was before the court. In ordering a PSI at the conclusion of the plea hearing, the court explained that it was doing so because of the "charge in Florida that had to do with children" and "the other

[5] We see no arguable merit in Grimes's assertion in his response to the no-merit report that the court "den[ied him] the right of allocution at sentencing" because, instead of "ask[ing him] why sentence should not be pronounced," using the wording in WIS. STAT. § 972.14(2), the court informed him that he "ha[d] the right to speak on [his] own behalf.

counts here that [it would] be dismissing." It also warned Grimes that if he chose not to discuss the facts with his PSI writer—who, the court had explained, would be gathering information from a variety of sources, including from the complaint and the victim—the court would be "left only with what they say." It would not be reasonable for anyone, even someone unfamiliar with legal proceedings as Grimes claims he then was, to believe that none of his conduct apart from that which satisfied the elements of the enticement charge would be considered by the time he was given the opportunity to speak, even if that is what his attorney had told him prior to entering his plea. Grimes cannot show "a reasonable probability that … the result of the proceeding would have been different" if counsel had given him the correct advice before sentencing, given that the court conveyed the correct legal standard well in advance of imposing sentence. *See* ***id.*** at 694.

The final issue raised in Grimes's response to the no-merit report that warrants brief discussion is his assertion that trial counsel did not share or review the PSI with him before sentencing. For the purpose of this appeal, we assume that Grimes was, as he now asserts, unaware of the contents of the PSI before sentencing and that therefore his attorney's performance was deficient. But once again here, the record shows that Grimes could not possibly establish that he was prejudiced. To the extent that he was surprised by any negative information in the PSI, that information—including the information and inferences related to the runaway teen he lived with in Florida—was fully discussed at Grimes's initial sentencing hearing. Further, that hearing was continued so that Grimes could provide a detective with the individual's contact information and "resolve any negative implications." Indeed, he had a full opportunity to make any statement about the report that he cared to make. Grimes cannot logically argue that he was prejudiced by not knowing the contents of the PSI before sentencing

when the record shows he was made aware of the information at the first sentencing hearing, which was a week prior to sentence being imposed at the second hearing, at which he had a full opportunity to speak and give his version of the facts.

Based on the above, this court concludes that any appellate challenge to Grimes's sentence would also be without arguable merit. Our review of the record discloses no other potential issues for appeal.

Therefore,

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

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

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

Samuel A. Christensen
Clerk of Court of Appeals