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DISTRICT II

March 19, 2014

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

2014AP1-CRNM State of Wisconsin v. Brian G. Matthews (L.C. # 2011CF690)

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

Brian G. Matthews appeals from a judgment convicting him of five counts of possession of child pornography. Matthews' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Matthews received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Matthews' no contest pleas were knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether the search of Matthews' home that led to the discovery of the evidence against him violated the Fourth Amendment to the United States Constitution.

With respect to the entry of the no contest pleas, the record shows that the circuit court engaged in a colloquy with Matthews that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Matthews' no contest pleas would lack arguable merit.

With respect to sentencing, the record reveals that the circuit court's decision to impose an aggregate sentence of sixteen years of imprisonment followed by ten years of probation³ had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678

² There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Matthews' pleas are likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2).

³ There was some initial confusion as to whether Matthews' probation would run consecutive or concurrent to his prison terms. The amended judgment of conviction indicates that it will run consecutive. We agree with counsel that this disposition is consistent with the circuit court's sentencing intent.

N.W.2d 197 (citation omitted). Under the circumstances of the case, the court's sentence, which was well within the statutory maximum, 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). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.⁴

Finally, with respect to the search of Matthews' home, there is nothing in the record to suggest that it violated the Fourth Amendment to the United States Constitution. According to police reports, Matthews consented to both the police's entry into his home and search of his computer. Counsel has concluded that Matthews would be unable to present any evidence to contradict this version of events. Consequently, we conclude that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

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 report and relieve Attorney Pamela Moorshead of further representation in this matter.

Upon the foregoing reasons,

⁴ The circuit court did not make a finding on the record as to Matthews' eligibility for the substance abuse program or the challenge incarceration program as required by WIS. STAT. § 973.01(3g) and (3m). The amended judgment of conviction indicates that he is not eligible for either one. As noted by counsel, there is no suggestion in the record that Matthews is in need of substance abuse treatment, and he is statutorily ineligible for the challenge incarceration program because of his age. Accordingly, we are satisfied that the circuit court's omission does not present a potentially meritorious issue for appeal.

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 Pamela Moorshead is relieved of further representation of Matthews in this matter.

Diane M. Fremgen
Clerk of Court of Appeals