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September 27, 2017

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

2016AP1092-CRNM State of Wisconsin v. Yosayf J. Smith (L.C. # 2015CF217)

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

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).

Yosayf J. Smith appeals from a judgment of conviction entered upon his no contest plea to one count of third-degree sexual assault. Smith's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967).

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

Smith received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Smith was originally charged with sexual assault of a child under the age of sixteen contrary to WIS. STAT. § 948.02(2), a Class C Felony. The complaint alleged that in 2014, when Smith was sixteen years old, he had sexual intercourse with a fourteen-year-old female. As part of a plea agreement, Smith pled no contest to an amended charge of third-degree sexual assault contrary to WIS. STAT. § 940.225(3), a Class G felony, and the State agreed to cap its sentencing recommendation at three years of initial confinement and three years of extended supervision.² At sentencing, the court imposed a six-year bifurcated sentence, with four and one-half years of initial confinement and one and one-half years of extended supervision.

The no-merit report first addresses whether Smith's plea was freely, voluntarily, and knowingly entered. The circuit court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Smith's signed plea questionnaire to establish his knowledge and understanding of his pleas. *See State v. Hoppe*,

² This case was originally part of a global settlement involving three other circuit court cases. At the first plea hearing, trial counsel informed the court and the State that Smith no longer wished to change his plea in the instant case. The State agreed to keep the original plea offer in place and Smith resolved the other three cases at that first hearing. About two weeks later, Smith decided to accept the plea offer in this case.

2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with appellate counsel that no issue of arguable merit arises from the plea-taking procedures in this case.

Next, the no-merit report discusses whether there is any arguably meritorious challenge to the circuit court's exercise of its discretion at sentencing. In fashioning the sentence, the court considered the seriousness of the offense, the defendant's 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. The court focused on Smith's lengthy juvenile record and his poor behavior on supervision and in other structured settings, including jail. Determining that Smith lacked remorse and was likely to reoffend, had "a significant problem with authority," and was "not even controllable in a controlled situation like jail," the circuit court found that incarceration was necessary to protect the public. We agree with appellate counsel's conclusion that this constitutes a proper exercise of the circuit court's sentencing discretion. Further, we cannot conclude that the six-year sentence, when measured against the possible maximum of ten years, is so excessive or unusual as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The no-merit report also addresses whether trial counsel provided ineffective assistance and if, given that Smith was sixteen-years old at the time of the offense, there is a potentially meritorious challenge to the commencement of this action in adult court. This court is satisfied that the no-merit report properly analyzes these issues as without arguable merit and we will not address them further.

Our review of the record discloses no other potential issues for appeal.³ Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Smith in this 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 Jeffrey A. Mann is relieved from further representing Yosayf J. Smith in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Clerk of Court of Appeals

³ Smith's plea forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.