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DISTRICT III

August 16, 2022

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Circuit Court Judge
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Clerk of Circuit Court
Kewaunee County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2020AP113-CRNM State of Wisconsin v. Tyrell Dashawn Bass (L. C. No. 2018CF2)

Before Stark, P.J., Hruz and Gill, 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).

Tyrell Bass appeals from a judgment convicting him of first-degree sexual assault of a child under the age of thirteen. Attorney Mark Schoenfeldt has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).¹ The no-merit report sets forth the procedural history of the case and addresses the validity of Bass's plea and sentence. Bass has filed a response raising twenty-seven points that can be grouped into the following categories of claims: (1) there was insufficient evidence to support Bass's conviction,

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

taking into account what Bass deems to be the inconclusive nature of an examination performed by a sexual assault nurse examiner (SANE), various inconsistencies in the victim’s account, gaps in Bass’s own memory due to heavy drug use, and the fact that the victim tested positive for chlamydia but Bass did not; (2) his trial counsel “pressured” and “manipulated” Bass into entering a plea by telling him that the circuit court would sentence him to “the max” if he went to trial and coaching him to “just [say] yes to everything” during the plea colloquy; (3) Bass was incompetent and did not “know what he was doing” by entering a plea or understand that pleading no contest would result in an adjudication of guilt; and (4) the court did not advise Bass that he could withdraw his plea or that there might be a potential defense to the charge. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude there are no arguably meritorious issues for appeal.

The State initially charged Bass with first-degree sexual assault of a child under the age of twelve—an offense with a mandatory minimum sentence of twenty-five years’ initial confinement. The charge arose from an investigation initiated after Bass spontaneously apologized on a phone call with a former girlfriend for sexual contact that Bass had with the girlfriend’s five-year-old daughter, whom we will call “Gina.”²

The circuit court ordered a competency evaluation based upon Bass’s own assertion that he was incompetent due to schizophrenia. The psychiatrist who evaluated Bass diagnosed him with “Methamphetamine Induced Psychotic Disorder” and “Methamphetamine Use Disorder, severe, in early remission, in a controlled environment.” The psychiatrist concluded that Bass

² This matter involves the victim of a crime. Pursuant to WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

was competent to stand trial because he fully understood how court proceedings worked and was able to rationally and coherently discuss his case, despite suffering some lingering psychotic symptoms, including auditory hallucinations. Based upon the evaluation, the court found Bass competent to proceed.

Pursuant to a plea deal, Bass eventually pled no contest to an amended charge of first-degree sexual assault of a person under the age of thirteen, which did not carry a mandatory minimum sentence. In addition, the State agreed to recommend that an unrelated charge in another case be dismissed and read in. The parties also agreed to request a presentence investigation report (PSI) and to be free to argue at sentencing. The circuit court accepted Bass's plea after conducting a plea colloquy, reviewing Bass's signed plea questionnaire and waiver of rights form with attached jury instructions, and obtaining the parties' agreement that the complaint provided a factual basis for the charge.

The circuit court ordered and reviewed a PSI, and subsequently held a sentencing hearing during which the court heard from the attorneys, Bass, the victim's grandmother, and Bass's mother. The court discussed proper sentencing factors, including the gravity of the offense, Bass's character, and sentencing goals such as punishment, the need to protect the public, and the possibility of rehabilitation. Among the aggravating factors considered by the court was that Bass had transmitted chlamydia to the child. The court then sentenced Bass to twenty years' initial confinement followed by ten years' extended supervision.

We begin by noting that the facts set forth in the complaint—including statements Bass made to his former girlfriend, the victim's description in a forensic interview of multiple incidents involving sexual contact, and the results of the SANE examination—provided an

adequate factual basis for Bass's no-contest plea because the conduct described satisfied the elements of the charged offense. By entering the plea, Bass waived his right to a trial and relieved the State of having to prove beyond a reasonable doubt that the alleged conduct occurred, or that it occurred in precisely the way described by the five-year-old victim. Therefore, Bass cannot now raise a challenge to the sufficiency of the evidence in terms of what weight to give the SANE examination or the victim's credibility.

Moreover, under the standard applicable to plea withdrawal motions filed following sentencing, we look to the entire record to determine whether a "manifest injustice" occurred warranting plea withdrawal. *State v. Thomas*, 2000 WI 13, ¶¶17-18, 232 Wis. 2d 714, 605 N.W.2d 836. Here, Bass told the circuit court at sentencing that: "[t]he reason I turned myself in and like told them what I did is because I couldn't live with what I did without being punished, you know, and I regret it every day." In addition, Bass described in detail to the PSI author several incidents of sexual contact that he had with Gina—substantially corroborating multiple aspects of Gina's account. Given Bass's own admissions of guilt in the record, any potential weaknesses in the strength of the State's case do not lead to a conclusion that Bass's plea was manifestly unjust.

Bass has attached to his no-merit response a laboratory report showing that, several weeks after he was sentenced, Bass tested negative for chlamydia. The laboratory report does not undermine the validity of the plea, however, because not every sexual contact necessarily results in the transmission of an infection. That is, even if Bass never had chlamydia, he still could have engaged in sexual contact with Gina as both he and Gina described. The laboratory report is also insufficient to establish that Bass was sentenced based upon inaccurate information. The conduct underlying the offense was alleged to have occurred in October 2017, nearly a year

and one-half before Bass's negative chlamydia test. It is entirely possible that Bass had a prior infection that was resolved during the pendency of the case.

Next, Bass's allegation that his trial counsel advised him he would receive "the max" if he did not enter a plea, even if true, would not establish ineffective assistance of counsel. It is well within the scope of counsel's responsibilities to advise a client as to the attorney's opinion of the likely sentence. Here, Bass was initially facing a charge so serious that the legislature set a mandatory minimum of twenty-five years' initial incarceration. In short, sexually assaulting a five-year-old child is precisely the type of offense for which a maximum sentence might reasonably be anticipated.

Bass's allegation that his counsel "coached" him to answer the circuit court's questions affirmatively during the plea colloquy is also insufficient to establish a claim of ineffective assistance of counsel. Bass cannot establish prejudice because he has not alleged that he would have answered any particular question from the court differently absent the alleged coaching or that he actually misunderstood the nature of the charge or any of the specific constitutional rights that he was waiving.

Bass does make a more general allegation that he did not understand what he was doing by entering a plea or that his no-contest plea would result in an adjudication of guilt. These allegations are belied by the record, however, which conclusively demonstrates that Bass was able to very accurately describe the plea process to the psychiatrist who conducted the competency evaluation. Further, by signing the Plea Questionnaire and Waiver of Rights Form, Bass acknowledged that "if the judge accepts my plea, the judge will find me guilty of the

crime(s) to which I am pleading based upon the facts in the criminal complaint and/or the preliminary examination and/or as stated in court.”

Next, Bass’s allegation that the circuit court failed to advise him that he could withdraw his plea provides no grounds for plea withdrawal because the court had no obligation to provide Bass with that information. The court likewise had no obligation to inform Bass that he had any specific defense to the charge. Moreover, to the extent that Bass may be referring to the negative chlamydia test, it was not yet in existence when the court accepted Bass’s plea and sentenced him.

Finally, we agree with counsel’s description, analysis, and conclusion that any challenge to Bass’s sentence would lack arguable merit. In particular, although the initial confinement time that the circuit court imposed was twice the amount requested by the State, it was five years less than the mandatory minimum Bass would have been subject to without the plea deal. Further it was well within the maximum sentence available for the offense of first-degree sexual assault of a person under the age of thirteen and, therefore, presumptively not unduly harsh. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted).

Our independent review of the record discloses no other potential issues for appeal.³ We conclude that any further appellate proceedings would be wholly frivolous within the meaning of

³ We note that Bass’s plea forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Anders. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Mark Schoenfeldt is relieved of any further representation of Tyrell Bass in this matter pursuant to 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