

IN THE SUPREME COURT, STATE OF WYOMING

2018 WY 37

April Term, A.D. 2018

April 11, 2018

TIMOTHY B. DUELKE,

**Appellant
(Defendant),**

v.

THE STATE OF WYOMING,

**Appellee
(Plaintiff).**

S-17-0323

ORDER AFFIRMING THE DISTRICT COURT’S JUDGMENT AND SENTENCE

[¶1] **This matter** came before the Court upon its own motion following notification that Appellant has not filed a *pro se* brief within the time allotted by this Court. Pursuant to a plea agreement, Appellant entered unconditional “no contest” pleas to two counts of sexual abuse of a minor in the first degree. Wyo. Stat. Ann. § 6-2-314(a)(ii). The district court imposed concurrent sentences of 14 to 20 years. Appellant filed this appeal to challenge the district court’s August 2, 2017, “Judgment Upon Plea of No Contest” and its October 26, 2017, “Sentence.”

[¶2] On January 23, 2018, Appellant’s court-appointed appellate counsel e-filed a “Motion to Withdraw as Counsel,” pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967). The next day, this Court entered an “Order Granting Motion for Extension of Time to File *Pro Se* Brief.” This Court ordered that, on or before March 19, 2018, Appellant “may file with this Court a *pro se* brief specifying the issues he would like this Court to consider in this appeal.” This Court also provided notice that, after the time for filing a *pro se* brief expired, this Court would “make its ruling on counsel’s motion to withdraw and, if appropriate, make a final decision on this appeal.” This Court notes that Appellant did not file a *pro se* brief or other pleading in the time allotted.

[¶3] Now, following a careful review of the record and the “*Anders* brief” submitted by appellate counsel, this Court finds that appellate counsel’s motion to withdraw should be granted and the district court’s judgment and sentence should be affirmed, subject to the following correction.

[¶4] This Court finds the district court should correct a discrepancy between the orally pronounced sentence and the written sentence. At sentencing, the district court stated that it “will impose a \$200 assessment as to each of the Crime Victim Compensation Funds....” (Sentencing Transcript, p. 24) Despite that, the written sentence requires appellant to pay \$250 per count “for the Crime Victim’s Compensation Fund Surcharge.” “A long-recognized rule of this Court is that where there is conflict between the sentence as articulated at sentencing, and the written sentence, the oral sentence prevails.” *Pinker v. State*, 2008 WY 86, ¶ 7, 188 P.3d 571, 574 (Wyo. 2008). This Court finds the district court should correct the written sentence to conform to the oral pronouncement. It is, therefore,

[¶5] **ORDERED** that the Wyoming Public Defender’s Office, court-appointed counsel for Appellant, Timothy B. Duelke, is hereby permitted to withdraw as counsel of record for Appellant; and it is further

[¶6] **ORDERED** that the district court’s August 2, 2017, “Judgment Upon Plea of No Contest” (and as corrected), is affirmed; and it is further

[¶7] **ORDERED** that the district court’s October 26, 2017, “Sentence” be, and the same hereby is, affirmed, except for the Crime Victim’s Compensation Surcharges; and it is further

[¶8] **ORDERED** that this matter is remanded to the district court for entry of an order correcting the “Sentence” so that the Appellant is required to pay \$200 per count for the Crime Victim’s Compensation Fund Surcharge.

[¶9] **DATED** this 11th day of April, 2018.

BY THE COURT:

/s/

E. JAMES BURKE
Chief Justice