

IN THE SUPREME COURT, STATE OF WYOMING

2019 WY 35

October Term, A.D. 2018

March 27, 2019

NATHAN DAVID BYRD,

**Appellant
(Defendant),**

v.

S-18-0214

THE STATE OF WYOMING,

**Appellee
(Plaintiff).**

ORDER AFFIRMING THE DISTRICT COURT’S JUDGMENT AND SENTENCE

[¶ 1] **This matter** came before the Court upon its own motion following the filing of the *pro se* “Brief of Appellant.” Pursuant to a plea agreement, Appellant entered an unconditional *Alford* guilty plea to one count of sexual abuse of a minor in the third degree. Wyo.Stat. Ann. § 6-2-316(a)(i). The district court imposed a 13 to 15-year sentence. Appellant filed this appeal to challenge the district court’s June 27, 2018, “Judgment, Sentence and Order of Incarceration.”

[¶ 2] On December 17, 2018, Appellant’s court-appointed appellate counsel 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). This Court subsequently entered an order that permitted Appellant to “file with this Court a *pro se* brief specifying the issues he would like the Court to consider in this appeal.” Appellant has filed a *pro se* “Brief of Appellant.”

[¶ 3] Now, following a careful review of the record, the “*Anders* brief” submitted by appellate counsel, and the *pro se* “Brief of Appellant,” this Court finds that appellate counsel’s motion to withdraw should be granted and the district court’s “Judgment, Sentence and Order of Incarceration” should be affirmed.

[¶ 4] With respect to the *pro se* “Brief of Appellant,” this Court finds that, based on the record extant, Appellant has not provided any reason to conclude this appeal has merit. With respect to Appellant’s complaint that the district court did not accept the sentencing recommendation contemplated by the plea agreement, this Court notes the plea agreement included a “sentencing recommendation” agreement, the type contemplated by W.R.Cr.P. 11(e)(1)(B). Under such an agreement (and as Appellant was advised), that rule does not require that a defendant be permitted to withdraw his plea if the district court does not accept the sentencing recommendation. With respect to Appellant’s complaints about the district court’s firearms advisements, this Court finds the district court provided the employment or occupational advisement required by Wyo.Stat.Ann. § 7-11-507(a)(ii). (Arraignment Transcript, p. 4-5; Change of Plea Transcript, p. 8-9) Finally, with respect to Appellant’s claims that trial counsel was ineffective, this Court finds the claims are not supported by the record extant. It is, therefore,

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

[¶ 6] **ORDERED** that the district court’s June 27, 2018, “Judgment, Sentence and Order of Incarceration” be, and the same hereby is, affirmed.

[¶ 7] **DATED** this 27th day of March, 2019.

BY THE COURT:

/s/

MICHAEL K. DAVIS
Chief Justice