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DISTRICT II

December 6, 2023

To:

Hon. Mark F. Nielsen
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Patricia J. Hanson
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Orlando Carlos, #561525
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P.O. Box 925
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You are hereby notified that the Court has entered the following opinion and order:

2021AP611-CRNM	State of Wisconsin v. Orlando Carlos (L.C. #2018CF147)
2021AP612-CRNM	State of Wisconsin v. Orlando Carlos (L.C. #2018CF1403)
2021AP613-CRNM	State of Wisconsin v. Orlando Carlos (L.C. # 2019CF344)
2021AP614-CRNM	State of Wisconsin v. Orlando Carlos (L.C. # 2019CF382)

Before Gundrum, P.J., Grogan and Lazar, 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).

Orlando Carlos appeals from four judgments convicting him of multiple crimes. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Carlos filed a response to counsel's no-merit report. Counsel then filed a supplemental no-merit report, and Carlos filed an additional response. After

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

reviewing the Record, counsel's reports, and Carlos' responses, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

Carlos was charged with multiple drug-related and driving offenses in four separate criminal complaints. Pursuant to a global plea agreement, he pled guilty to six felony charges: two counts of attempting to elude an officer as a repeater; one count of possession with intent to deliver or manufacture THC at or near a school as a second or subsequent offense; two counts of delivering or manufacturing cocaine as a second or subsequent offense; and one count of delivering or manufacturing THC as a second or subsequent offense. Fourteen additional charges were dismissed and read in for sentencing purposes.

The circuit court observed that Carlos was facing forty-eight years of imprisonment for his offenses, but imposed substantially less imprisonment than that. The aggregate sentence for both attempted eluding convictions and both cocaine convictions was eight years of initial confinement and nine years of extended supervision, consecutive to the sentence Carlos was already serving at the time. The court imposed and stayed additional prison sentences on the two THC convictions, placing Carlos on probation for those offenses. This no-merit appeal follows.

First, the no-merit report addresses whether there would be arguable merit to a claim of ineffective assistance of counsel because trial counsel failed to obtain police body camera footage memorializing one of Carlos' attempts to elude an officer. Carlos asserts that the failure to obtain this digital discovery before he entered his pleas supports an argument that counsel's performance was deficient. *See* ***State v. Thiel***, 2003 WI 111, ¶37, 264 Wis. 2d 571, 665 N.W.2d

305. However, no-merit counsel informs us that, based on her discussions with Carlos and with his trial counsel, there is no basis to contend that Carlos would not have entered his pleas pursuant to the global plea agreement based on any information that could have been obtained from additional discovery related to one of his four cases. Thus, regardless of whether counsel performed deficiently by not obtaining the body camera footage, we agree with no-merit counsel that nothing in the Record indicates that Carlos was prejudiced by trial counsel's performance.

No-merit counsel further informs us that the body camera footage is not exculpatory and does not exonerate Carlos of the attempt to elude the officer—in fact, it shows that Carlos did exactly that to which he pled. Counsel states that Carlos has never indicated to her or to trial counsel that he did not commit the crime depicted in the body camera footage, nor does he now profess his innocence in response to the no-merit report. Counsel also tells us that there is no evidence that the State acted in bad faith by not turning over the digital discovery from one of Carlos' four cases when it turned over the paper discovery. Thus, there is no basis to conclude that there was a ***Brady***[2] violation related to the trial counsel's failure to obtain the digital discovery from the State. Finally, nothing in our independent review of the Record would support a claim that trial counsel rendered ineffective assistance. Accordingly, we agree that this issue lacks arguable merit.

There also is no arguable merit to claims that the circuit court improperly exercised its sentencing discretion or imposed a sentence that was excessive or too harsh. In imposing sentence, the court explicitly considered the seriousness of the offense, Carlos' character, and the

[2] *See* ***Brady v. Maryland***, 373 U.S. 83 (1963).

need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. The court stressed the need to protect the public given the nature of the convictions, and all parties agreed that some prison was warranted for at least that reason. As stated above, though, the court did not impose anywhere near the maximum imprisonment term Carlos faced. Under the circumstances, it cannot reasonably be argued that Carlos' sentence is excessive, much less so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to counsel's no-merit report, Carlos argues that the circuit court sentenced him based on inaccurate information because neither the parties nor the court had the benefit of viewing the body camera footage before sentencing. The Record does not support Carlos' position. As to each of the four relevant cases, the presentence investigation (PSI) indicated that Carlos "reviewed the criminal complaint and admitted it was accurate[,]" except that he denied having a gang affiliation as alleged in one complaint. Carlos had the opportunity at sentencing to comment on the PSI, including his statement admitting to the factual accuracy of the complaints, and he indicated through his counsel that the PSI contained no inaccuracies. Carlos also had the opportunity to address the circuit court directly, and did so prior to the court's imposition of sentence. At no point during his sentencing hearing did Carlos indicate that there were errors in the criminal complaints, the PSI, or any other portion of the Record. There is no arguable merit to any challenge to the sentence.

Finally, the no-merit report addresses the validity of Carlos' plea. Carlos claims that he would not have pled guilty if he knew that the criminal complaints contained inaccurate information. As explained above, there is no evidence that the circuit court considered any

inaccurate information. Carlos stated on the record that there was a factual basis for each of the pleas, and there is nothing in the no-merit reports, the responses, or the Record that leads us to conclude otherwise. The court went to great lengths during the plea colloquy to ensure that Carlos agreed with the factual bases to support the pleas. In addition, Carlos indicated satisfaction with his attorney and that counsel had satisfactorily responded to all his questions throughout the process. Carlos has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling.[3] *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Carlos and determine information such as Carlos' ability to understand the proceedings, that no promises were made to Carlos to obtain his pleas, and that factual bases existed to support the pleas. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Carlos' plea would lack arguable merit.

[3] Carlos brought no suppression motion and nothing in the Record suggests any basis for suppression of any relevant evidence. We further observe that Carlos waived any potential challenge to the timeliness of his preliminary hearings by entering his pleas. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Upon our independent review of the Record, we have found no other arguable basis for reversing the judgments of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Upon the foregoing reasons,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Megan Kaldunski is relieved from further representing Orlando Carlos in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals