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DISTRICT IV

January 19, 2024

To:

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Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

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Jay Y. Perez 681451
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P.O. Box 3310
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1763-CRNM State of Wisconsin v. Jay Y. Perez (L.C. # 2018CF336)

Before Blanchard, Graham, and Nashold, 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).

Attorney Philip J. Brehm, appointed counsel for Jay Perez, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the jury verdicts; a challenge to the sentence imposed by the circuit court; a request for sentence modification; or a

[1] All references to the Wisconsin Statutes are to the 2017-18 version.

claim of ineffective assistance of trial counsel. Perez was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Perez was convicted, following a jury trial, of two counts of first-degree sexual assault of a child, two counts of incest, and one count of child enticement. The court sentenced Perez to a total of fifteen years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support the convictions. A claim of insufficiency of the evidence requires a showing that "the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel's assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial, including testimony by the victim, if deemed credible by the jury, was sufficient to support the verdicts.

The no-merit report also addresses whether a challenge to Perez's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Perez was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Perez's

character and rehabilitative needs, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Perez faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (citation omitted)). The court awarded Perez sentence credit in the amount of 89 days, a calculation undisputed by counsel. We discern no erroneous exercise of the court's sentencing discretion.

The no-merit report states that counsel is unaware of any basis to support a motion for sentence modification.

Finally, the no-merit report addresses whether there would be arguable merit to a claim that Perez's trial counsel was ineffective. The no-merit report specifically addresses two issues that Perez raised as a potential basis for a postconviction motion: (1) that trial counsel failed to convey the State's plea agreement offer to Perez; and (2) that trial counsel failed to call Perez's wife as a witness at trial. We adopt the no-merit report's analysis of the two potential issues Perez identified, and we agree with the no-merit report's assessment that a claim of ineffective assistance of trial counsel would be wholly frivolous.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Philip Brehm is relieved of any further representation of Jay Perez in this matter. *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