



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

March 5, 2024

To:

Hon. David L. Borowski
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Eliseo Calderon-Torres 702450
New Lisbon Correctional Institution
2000 Progress Drive
New Lisbon, WI 53950

Jill Marie Skwor
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP480-CRNM State of Wisconsin v. Eliseo Calderon-Torres (L.C. # 2020CF1077)

Before Donald, P.J., Geenen and Colón, 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).

Eliseo Calderon-Torres appeals the judgment convicting him of first-degree reckless homicide as a party to a crime. His appellate counsel, Jill Marie Skwor, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Calderon-Torres received a copy of the report, was advised of his right to file a response, and did not do so. We have independently reviewed the record and the no-merit report as mandated by

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

Anders. We conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The State charged Calderon-Torres with first-degree reckless homicide and first-degree recklessly endangering safety, both charges as a party to the crimes and with the use of a dangerous weapon. The charges stemmed from an incident that occurred early in the morning on March 1, 2020. According to the complaint, which served as the factual basis for Calderon-Torres's guilty plea, a witness reported that two groups of people got into an altercation at a restaurant. As a result, the restaurant's security staff separated the groups and had them leave at two different times in order to keep them apart.

The first group began walking. As they did so, members of the second group drove up to them in a vehicle and fired guns. G.M., who was with the first group, suffered a gunshot wound to his head and was pronounced dead at the scene. H.M., who was also with the first group, suffered a graze wound to his back. Police officers responded to the scene and retrieved a number of bullet fragments from the area.

A witness identified Calderon-Torres in a live line-up as one of the men inside the vehicle. Following his arrest, Calderon-Torres made a statement admitting he was involved in the altercation and had fired an assault-type rifle during the shooting.

Calderon-Torres subsequently sought to suppress his statement. The circuit court held an evidentiary hearing before denying the motion.

Pursuant to negotiations, Calderon-Torres pled guilty to the charge of first-degree reckless homicide as a party to the crime without the penalty enhancer for using a dangerous

weapon. In exchange, the State moved to dismiss and read-in the charge of first-degree recklessly endangering safety as a party to the crime with use of a dangerous weapon. The State additionally agreed to recommend a sentence of thirty years of initial confinement but would defer to the court as to extended supervision. The plea negotiations left Calderon-Torres free to argue as to the length of his sentence.

The circuit court ordered Calderon-Torres to serve a thirty-five-year sentence, comprised of twenty-five years of initial confinement and ten years of extended supervision. Calderon-Torres did not object to paying restitution in the amount of \$7,121. This no-merit appeal follows.

The no-merit report first analyzes whether the circuit court properly denied Calderon-Torres's suppression motion.² In his motion, Calderon-Torres claimed that the first time detectives interviewed him, on March 5, 2020, he requested an attorney and the questioning stopped. The following day, while he was still incarcerated, Calderon-Torres argued that the police approached him to reinitiate the interview. Calderon-Torres asserted that a detective spent twenty-five minutes with him that day, purportedly to obtain DNA and to ask for consent to view his cell phone, though only a few minutes were used for those purposes. According to Calderon-Torres, the detective spending more time with him than was minimally necessary amounted to a subtle pressure scenario that made his later confession involuntary. *See State v. Hoppe*, 2003 WI

² As a rule, a defendant who enters a knowing, intelligent, and voluntary guilty plea gives up all nonjurisdictional challenges to the conviction. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. An exception to this rule is codified in WIS. STAT. § 971.31(10), which permits a defendant who has pled guilty to challenge an order denying a motion to suppress evidence.

43, ¶46, 261 Wis. 2d 294, 661 N.W.2d 407 (explaining that “subtle pressures are considered to be coercive if they exceed the defendant’s ability to resist”).

A circuit court’s decision on a motion to suppress evidence presents a mixed question of fact and law. *State v. Casarez*, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. We do not reverse the circuit court’s factual findings unless clearly erroneous, but the application of constitutional principles to those findings is reviewed *de novo*. *Id.*

To be admissible, a defendant’s statements must be voluntary. *See State v. Davis*, 2008 WI 71, ¶35, 310 Wis. 2d 583, 751 N.W.2d 332. “[S]tatements are voluntary if they are the product of a free and unconstrained will, reflecting deliberateness of choice[.]” *Id.*, ¶36 (citation omitted). If law enforcement does not use coercion or other improper conduct to secure a statement, the statement is deemed voluntary. *Id.* Whether a statement is voluntary is a question of constitutional fact. *State v. Jerrell C.J.*, 2005 WI 105, ¶16, 283 Wis. 2d 145, 699 N.W.2d 110.

In denying Calderon-Torres’s suppression motion, the circuit court explained that it had reviewed the recorded interviews and the video of the detective obtaining Calderon-Torres’s DNA. The court found that there was “nothing to suggest that the defendant was coerced; that he was pressured; that there was any direct or tacit pressure put on the defendant either during the times played in court or during the DNA collection.” The court additionally found that during the videos, Calderon-Torres appeared calm, noting: “He did not seem at all under any duress himself. He did not seem to be nervous.” The court found that Calderon-Torres voluntarily reinitiated a subsequent conversation with the detectives, which ultimately led to his inculpatory statement. Applying the circuit court’s factual findings to the legal standard for voluntariness,

we conclude there is no arguable merit to challenge the court's denial of Calderon-Torres's suppression motion.

The no-merit report next addresses whether there would be arguable merit to a claim that Calderon-Torres did not knowingly, voluntarily, and intelligently enter his guilty plea. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking the guilty plea, pursuant to WIS. STAT. § 971.08, *Bangert*, 131 Wis. 2d at 261-62, and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There would be no arguable merit to a claim on this basis.

Lastly, the no-merit report discusses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *Gallion*, 270 Wis. 2d 535, ¶41. The weight to be given to each factor is committed to the circuit court's discretion. *Ziegler*, 289 Wis. 2d 594, ¶23. We will sustain a circuit court's exercise of sentencing discretion if the sentence imposed was one that a reasonable judge might impose, even if this court or another judge might have imposed a different sentence. *State v. Odom*, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695. Our review of the record and counsel's analysis in the no-merit report confirms that the circuit court appropriately considered relevant sentencing objectives and factors, and imposed a

reasonable sentence. There would be no arguable merit to a challenge to the court's sentencing discretion.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Calderon-Torres further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jill Marie Skwor is relieved of any further representation of Eliseo Calderon-Torres 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