



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

April 2, 2024

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

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

Michael S. Holzman
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Oscar Javier Reyes 659291
Thompson Correctional Center.
434 State Farm Road
Deerfield, WI 53531-9562

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

2023AP1093-CRNM State of Wisconsin v. Oscar Javier Reyes (L.C. # 2019CF4223)

Before White, C.J., Donald, P.J., and Colón, J.

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).

Oscar Javier Reyes appeals a judgment convicting him of multiple crimes. Appellate counsel, Michael S. Holzman, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Reyes received a copy of the report, was advised of his right to file a response, and has responded. We have independently reviewed the record, the no-merit report, and the response, as mandated by *Anders*. We conclude that there

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

are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

In Milwaukee County Circuit Court case No. 2019CF4223, the State charged Reyes with five crimes: one count of possession with intent to deliver between 2,500 and 10,000 grams of marijuana with the use of a dangerous weapon; one count of maintaining a drug trafficking place with the use of a dangerous weapon; two counts of neglecting a child under the age of six where no harm occurred; and one count of possessing more than forty grams of cocaine with intent to deliver, with the use of a dangerous weapon. After posting bond, Reyes was charged with additional felonies in two criminal complaints. In Milwaukee County Circuit Court case No. 2020CF2686, the State charged Reyes with one count of interference with child custody and one count of felony bail jumping. In Milwaukee County Circuit Court case No. 2020CF3059, the State charged Reyes with one count of possession with intent to deliver more than 200 grams of marijuana, one count of maintaining a drug place, and one count of felony bail jumping. Only case No. 2019CF4223 is before this court.

All three cases were resolved through a global resolution. As relevant to this appeal, Reyes pled guilty to four of the five charges in case No. 2019CF4223. One count of child neglect was dismissed and read in.² The circuit court conducted a colloquy with Reyes and accepted his guilty pleas. As relevant to this appeal, the circuit court sentenced Reyes to seven years of initial confinement and seven years of extended supervision on the cocaine charge.

² Reyes also pled guilty to one count of interference with child custody in case No. 2020CF2686, and one count of possession with intent to deliver more than 200 grams of marijuana in case No. 2020CF3059. The remaining charges were dismissed and read in.

The circuit court sentenced Reyes to one year each of initial confinement and extended supervision on the remaining charges, to run concurrent to the sentence on the cocaine charge. The circuit court also made Reyes eligible for the Earned Release program and Challenge Incarceration program but only after serving five years of his initial confinement. This no-merit report follows.

Appellate counsel's no-merit report addresses three issues: (1) whether Reyes's pleas were knowing, intelligent, and voluntary; (2) whether the circuit court erroneously exercised its sentencing discretion; and (3) whether the circuit court erred in limiting Reyes's eligibility for early release programming until he had served five years of his sentence.

As to the first issue, our review of the record—including the plea questionnaire/waiver of rights form, the addendum, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. These obligations exist specifically to help ensure the validity of any plea. We agree with appellate counsel's conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that Reyes's pleas were anything other than knowing, intelligent, and voluntary.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court should consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712

N.W.2d 76. It should also determine which objective or objectives are of greatest importance. See *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court must consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court’s discretion. See *id.* The record reveals that the court considered and applied the relevant sentencing factors, focusing specifically on the gravity of the offenses and Reyes’s character. The resulting sentence was within the potential maximum authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public’s sentiment, see *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, a challenge to the court’s sentencing discretion would lack arguable merit.

Appellate counsel next addresses whether the circuit court erred in limiting Reyes’s eligibility for early release programming until he had served five years of his sentence. We agree with appellate counsel’s analysis of this issue and will not discuss it further.

In his response, Reyes contends that during the plea colloquy the circuit court referenced the wrong case number when taking his plea on the interference with child custody charge. Reyes contends that the error means he pled guilty to a crime he did not commit and that the circuit court must have committed additional errors during the hearing. Reyes is mistaken.

At the plea hearing, the circuit referenced case No. “2868,” rather than case No. 2020CF2686, when taking Reyes’s plea on the interference with child custody charge. We note first that case No. 2020CF2686 is not before this court. No appeal has been filed with regard to

case No.2020CF2686. Moreover, the circuit court committed a simple error when it misspoke with regard to the case number. The error is of no consequence to our review of the record.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Michael S. Holzman is relieved of further representation of Oscar Javier Reyes in this case pursuant to 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