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DISTRICT I

April 9, 2024

To:

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Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Jeremiah W. Meyer-O'Day
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Miguel Angel Fernandez 473963
Columbia Corr. Inst.
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Portage, WI 53901-0900

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

2022AP445-CRNM State of Wisconsin v. Miguel Angel Fernandez
(L.C. # 2018CF3527)

Before White, C.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).

Miguel Angel Fernandez appeals the judgment entered after he pled guilty to two counts of second-degree sexual assault of a child under the age of sixteen. His appellate counsel, Jeremiah W. Meyer-O'Day, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738 (1967).¹ Fernandez was advised of his right to file a response and has elected not to do so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, we conclude that the judgment may be summarily

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

affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State charged Fernandez with first-degree sexual assault of a child (sexual intercourse with a child under twelve years of age) and first-degree sexual assault of a child (sexual intercourse with a child under thirteen years of age). According to the complaint, Fernandez admitted to the crimes during a police interview.

Following Fernandez's initial appearance, trial counsel informed the court that he had reason to believe Fernandez was not competent to proceed. Pursuant to WIS. STAT. § 971.14(2), the court suspended the proceedings and ordered Fernandez to be examined. The examiner subsequently concluded that Fernandez was competent to proceed, and Fernandez did not contest the report.

Pursuant to the plea negotiations, the State amended the charges to two counts of second-degree sexual assault of a child (sexual intercourse with a child under the age of sixteen). Fernandez entered guilty pleas. The negotiations left both parties free to argue as to the length of Fernandez's sentences.

At sentencing, the circuit court sentenced Fernandez to eighteen years of initial confinement and eighteen years of extended supervision on each count, to be served concurrently with each other but consecutive to any other sentence. Following the sentencing hearing, the Department of Corrections correctly pointed out that the maximum term of extended supervision available was fifteen years. Consequently, the court amended the judgment of conviction to reflect a sentence of eighteen years of initial confinement and fifteen years of extended

supervision on each count, again to be served concurrently with each other but consecutively to any other sentence. This no-merit appeal follows.

The no-merit report addresses the validity of Fernandez’s pleas. 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 a guilty plea, 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. There would be no arguable merit to a claim that Fernandez’s pleas were not knowingly, intelligently, and voluntarily entered. We further note that Fernandez’s pleas forfeited the right to raise other nonjurisdictional defects and defenses (with some exceptions not relevant here). See *State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.²

The no-merit report also analyzes whether trial counsel was ineffective for failing to have Fernandez evaluated to see whether he qualified for a plea of not guilty by reason of mental disease or defect (NGI). See WIS. STAT. §§ 971.06(1)(d), 971.15. While the record indicates that Fernandez had mental health issues, there is nothing to indicate that at the time the crimes were committed, Fernandez lacked the substantial capacity to appreciate the wrongfulness of his conduct or was unable to conform his conduct to the requirements of law—the standard required

² During the initial appearance, the court misspoke when it informed Fernandez that WIS. STAT. § 939.616(1r)’s mandatory minimum confinement period of at least twenty-five years applied to both of the initial charges. See WIS. STAT. § 948.02(1)(b), (1)(e). The mandatory minimum only applied to the count of first-degree sexual assault of a child (sexual intercourse with a child under twelve years of age). The subsequently filed information did not contain the problematic language. Additionally, the court did not repeat the mistake when it discussed the plea negotiations with Fernandez. In any event, by virtue of his valid pleas, Fernandez gave up his right to challenge the sufficiency of the complaint or the misstatement during the initial appearance.

to establish an NGI plea. *See* § 971.15(1). We see no basis for Fernandez’s trial counsel to have advised Fernandez that he had a viable NGI defense.

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, *see Gallion*, 270 Wis. 2d 535, ¶41. The weight to be given to each factor is committed to the circuit court’s discretion. *See 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. *See 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 reasonable sentences. 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 judgment, and discharges appellate counsel of the obligation to represent Fernandez further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jeremiah W. Meyer-O'Day is relieved from further representing Miguel Angel Fernandez 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