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DISTRICT I/III

August 6, 2013

To:

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

2012AP1735-CRNM State v. Francisco Martinez Torres (L. C. #2011CF199)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Francisco Torres has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),¹ concluding no grounds exist to challenge Torres's conviction for second-degree sexual assault of a child. Torres was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Torres with first-degree sexual assault of a child under sixteen years of age (intercourse, by use or threat of force or violence) and second-degree sexual assault of a child. The charges arose from allegations that Torres raped and impregnated a twelve-year-old girl. In exchange for his guilty plea to second-degree sexual assault, the State agreed to dismiss the remaining charge and recommend a fifteen-year sentence, consisting of ten to twelve years' initial confinement followed by three to five years' extended supervision. Out of a maximum possible forty-year sentence, the court imposed a twenty-year sentence consisting of fifteen years' initial confinement and five years' extended supervision.

The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Torres completed, informed Torres of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a guilty plea. The court advised Torres of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), and confirmed Torres's understanding that the court was not bound by the terms of the plea agreement. *See State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14. The court also found that a sufficient factual basis existed in the criminal complaint and Torres's admissions at the plea hearing to support Torres's plea.

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Torres's character; the need to protect the public; and the mitigating factors Torres raised. *See State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it

cannot reasonably be argued that Torres's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We also agree with counsel's assessment that there is no arguable merit to any claim that Torres was sentenced based on inaccurate information.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Matthew S. Pinix is relieved of further representing Torres in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals