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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

January 7, 2014

To:

Hon. Rebecca F. Dallet
Circuit Court Judge
Branch 40
821 W State St
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

J. Dennis Thornton
Attorney at Law
1442 N. Farwell Ave. Ste. 505
Milwaukee, WI 53202-2913

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jose A. Ortiz, Jr. 201241
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2013AP1316-CRNM	State of Wisconsin v. Jose A. Ortiz, Jr. (L.C. #2011CF5616)
2013AP1317-CRNM	State of Wisconsin v. Jose A. Ortiz, Jr. (L.C. # 2012CF707)

Before Curley, P.J., Fine and Brennan, JJ.

Jose A. Ortiz, Jr., appeals from judgments of conviction, entered upon his guilty pleas, on one count of substantial battery as a domestic violence incident and one count of intimidation of a witness in furtherance of a conspiracy. Appellate counsel, J. Dennis Thornton, Esq., has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Ortiz was advised of his right to file a response, but he has not responded. Upon this court's independent review of the Records, as mandated by *Anders*, we concluded that there are no issues of arguable merit to pursue on appeal. We therefore summarily affirm the judgments.

Police were dispatched to an emergency room for a suspected battery. The victim had a laceration to her head, requiring seven staples. In addition, her legs were severely bruised from being beaten with a 2x4 board. The victim told the investigating officer that she had been out walking her dog when she was attacked from behind by unknown assailants in an alley. She said she was able to make it home, where she called her husband, Ortiz, at work. He told her to stay put while he called someone to take her to the hospital. The victim could not recall who transported her.

While the officer was interviewing the victim, a nurse came in to tell her that her husband was in the waiting room. The officer went out to interview Ortiz. Ortiz said the couple was at home together when his wife decided to walk to the store. While she was out, she was jumped by “some black girls.” Ortiz stated he called his mother to come take them to the hospital. The officer observed fresh scratch marks on Ortiz’s neck.

The investigating officer asked colleagues to investigate to try to find a crime scene; none was found in the alley near the victim’s residence. This, combined with the couple’s inconsistent statements, led the investigator to suspect a domestic violence incident. The victim subsequently implicitly admitted as much, but alternated between conceding Ortiz was her assailant and maintaining she had been attacked in the alley. When the officer went out to the waiting room to arrest Ortiz, Ortiz responded, “I don’t care, she ain’t going to court anyway. You think she’s gonna go to court?”

While waiting for another squad car to arrive, the officer was approached by Ortiz’s mother, who asked what was happening with her son. The officer informed her that Ortiz was being arrested for a domestic violence incident. Ortiz’s mother told the officer that both Ortiz

and his wife often get drunk and become violent. She told the officer that Ortiz had called her to take the victim to the hospital, but did not tell her what had happened. When she arrived at the home, the victim and Ortiz were sitting in front of the house, and the victim could barely walk to the car. Further, Ortiz told his mother that he would kill the couple's children, set the house on fire, and kill himself. Ortiz's mother took the victim to hospital, then returned to the house because she was worried about Ortiz and the children. She convinced Ortiz to come to the hospital for his wife. She also acknowledged that she knew Ortiz might be arrested, but stated that might be the best thing for him.

Ortiz was charged with one count of first-degree reckless injury as a domestic abuse incident while armed with a dangerous weapon and one count of misdemeanor disorderly conduct. While he was incarcerated on those charges, he called his mother frequently. Those calls were recorded. Ortiz spoke to his mother several times about making sure her statements and the victim's statements were consistent with each other and with the alley-attack story. Ortiz also stressed the need for the victim to swear out an affidavit in support of her story. Based on his phone calls, Ortiz was charged with six various counts of felony witness intimidation and, as added in a later information, two counts of solicitation of perjury.

In exchange for Ortiz's guilty pleas to an amended charge of substantial battery as a domestic abuse incident and one count of witness intimidation in furtherance of a conspiracy, the State agreed to dismiss the other pending counts outright. Ortiz then entered his pleas and was sentenced to one and one-half years' initial confinement and two years' extended supervision for the battery, plus a consecutive four years' initial confinement and four years' extended supervision for the intimidation.

The first two issues counsel addresses in the no-merit report go to preliminary matters: whether the complaints sufficiently stated probable cause, and whether the complaints were timely issued and the initial appearances timely held. Our review of the complaints satisfies us that they sufficiently state probable cause, and our review of the Records satisfies us that the complaints and initial appearances were timely. There are no issues of arguable merit regarding the complaints or the initial appearances.

The next potential issue counsel identifies is whether the circuit court followed the appropriate procedures in accepting Ortiz's pleas. Our review of the Records—including the plea questionnaires, waiver of rights forms, and plea hearing transcript—confirms 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, 261–262, 389 N.W.2d 12, 21 (1986), and subsequent cases, as collected in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 616–617, 716 N.W.2d 906, 917. There is no arguable merit to a claim that the circuit court failed to fulfill its obligations or that Ortiz's pleas were anything other than knowing, intelligent, and voluntary.

The other issue counsel raises is whether the circuit court erroneously exercised its sentencing discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. 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, 606, 712 N.W.2d 76, 82, and determine which objective or objectives are of greatest importance, see *Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d at 557, 678 N.W.2d at 207. In seeking to fulfill the sentencing objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several

subfactors. See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 851, 720 N.W.2d 695, 699. The weight to be given to each factor is committed to the circuit court’s discretion. See *Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d at 606, 712 N.W.2d at 82.

The circuit court explained that the battery was serious—Ortiz had stabbed his wife in the head, which could have killed her. Their relationship was one of violence, and Ortiz attempted to control his wife through abuse. Ortiz failed to display any understanding or remorse, instead shifting blame to the victim. The circuit court noted that Ortiz had a “terrible” prior record. He had a history of absconding, noncompletion of drug treatment, failed outpatient treatment, and failed alternatives to revocation. His prison disciplinary record indicated that he had difficulty behaving even while confined. The circuit court further concluded that Ortiz had serious anger issues. Based on his past, the circuit court determined that Ortiz’s inability to conform his behavior to expectations made him a threat to the community. The circuit court, while giving Ortiz credit for taking responsibility by entering a plea, found that Ortiz was in need of services, but those would have to be delivered while Ortiz was confined so as to protect the community.

The maximum possible sentence Ortiz could have received was thirteen and one-half years’ imprisonment. The sentence totaling eleven and one-half years’ imprisonment is well within the range authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 108, 622 N.W.2d 449, 456, 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, 461 (1975). There would be no arguable merit to a challenge to the sentencing court’s discretion.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that J. Dennis Thornton, Esq., is relieved of further representation of Ortiz in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals