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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  
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**DISTRICT I/III**

March 25, 2014

To:

Hon. Lindsey Canonie Grady  
Circuit Court Judge  
Courthouse, Branch 23  
901 N 9th Street  
Milwaukee, WI 53233

Hon. Mary E. Triggiano  
Circuit Court Judge  
Children's Court Center  
10201 Watertown Plank Road  
Wauwatosa, WI 53226-1425

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

Kaitlin A. Lamb  
Assistant State Public Defender  
735 N. Water St., Ste. 912  
Milwaukee, WI 53202

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

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

Francisco Luis 00600987  
Stanley Corr. Inst.  
100 Corrections Drive  
Stanley, WI 54768

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

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2013AP2713-CRNM      State of Wisconsin v. Francisco Luis (L. C. #2012CF2885)

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

Counsel for Francisco Luis filed a no-merit report concluding there is no arguable basis for Luis to withdraw his guilty plea or challenge the sentence imposed for second-degree reckless injury, domestic abuse. Luis was advised of his right to respond to the 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 basis for appeal.

The complaint charged Luis with aggravated battery-domestic abuse, alleging that he hit Mary R. from behind with a wooden object and kicked her as she laid on the floor, causing her to suffer a fractured foot, lacerations to her ear that required eight stitches and swelling of her brain. The amended information added one count of second-degree reckless injury-domestic abuse. Pursuant to a plea agreement, Luis pled guilty to count two, and count one was dismissed and read in for sentencing purposes. In return for Luis's plea, the State agreed to recommend a prison term without a specific recommendation as to the length of initial confinement and extended supervision. The court sentenced Luis to three years' initial confinement and four years' extended supervision.<sup>1</sup>

The record discloses no arguable manifest injustice upon which Luis could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form, informed Luis of the elements of the offense, the potential penalties and the constitutional rights he waived by pleading guilty. The jury instructions for the offense were attached to the plea questionnaire. Through an interpreter, Luis assured the court that the plea did not result from threats or promises and that he understood that he could be deported as a result of this conviction. As required by *State v. Hampton*, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court reminded Luis that it was not bound by the parties' sentence recommendations and could impose the maximum sentence of seven and one-half years' initial confinement and five years' extended

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<sup>1</sup> The initial judgment also required Luis to pay a \$250 DNA surcharge. The circuit court subsequently vacated that portion of the judgment.

supervision. The record shows the plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Although not addressed in the no-merit report, we have also considered whether the plea deal was illusory because a defendant cannot be convicted of both aggravated battery and second-degree reckless injury for a single act. See WIS. STAT. § 939.66(3). Because Luis performed separate acts that inflicted separate and distinct injuries and dangers to the victim, he committed separate volitional acts and was properly charged with two offenses. *State v. Eisch*, 96 Wis. 2d 25, 39, 291 N.W.2d 800 (1990). The State's agreement to make no specific sentence recommendation also gave Luis a benefit that renders the plea deal non-illusory.

Our review of the record also discloses no arguable basis for challenging the sentence. The court appropriately considered the seriousness of the offense, Luis's character, including a prior domestic battery, and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors and the seven-year sentence is well below the maximum sentence of twelve and one-half years and is not arguably so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Kaitlin Lamb is relieved of her obligation to further represent Luis in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*