



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

June 30, 2014

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Br. 6
821 W State St
Milwaukee, WI 53233

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

Randall E. Paulson
Asst. State Public Defender
735 N. Water St., #912
Milwaukee, WI 53202-4116

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

Benito Lopez 00592909
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2013AP2201-CRNM State of Wisconsin v. Benito Lopez (L.C. #2012CF577)

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

Benito Lopez appeals a judgment convicting him of one of count second-degree sexual assault of a child under sixteen years of age. Randall E. Paulson, Esq., filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v.*

California, 386 U.S. 738, 744 (1967). Lopez filed a response. After considering the no-merit report and the response, and after conducting an independent review of the Record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to an appellate challenge to Lopez's guilty plea. The plea colloquy complied in all respects with the requirements of WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266–272, 389 N.W.2d 12, 16 (1986). The prosecutor explained the plea bargain on the record and Lopez and his lawyer both informed the circuit court that it was correct as stated. Although there were two victims, the charge as to one of the victims was dropped in exchange for Lopez's plea. The circuit court informed Lopez that it did not have to follow the recommendations of the lawyers with regard to sentencing and could impose the maximum penalty. Lopez said that he understood. The circuit court reviewed the rights Lopez was waiving by entering a plea, the elements of the charge and maximum potential penalty Lopez faced. Lopez said that he understood the information.

The circuit court ascertained that Lopez had reviewed a plea questionnaire and waiver-of-rights form with his attorney. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827–828, 416 N.W.2d 627, 629–630 (Ct. App. 1987). Lopez told the court that he understood the information contained on the form and had answered the questions on the form honestly. Lopez admitted to facts alleged in the complaint that provided a sufficient factual basis for the plea. The circuit court informed Lopez that he could be deported as a result of being convicted of the crime if he

was not a citizen, and Lopez said he understood. Lopez had the assistance of a translator during the plea hearing—and other court proceedings—because English is not his native language. The proceedings were translated into Spanish for Lopez, and Lopez’s Spanish-language answers were translated back into English for the court. Based on the thorough plea colloquy, we conclude that there would be no arguable merit to an appellate challenge involving the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the sentence imposed on Lopez was a misuse of discretion. The circuit court sentenced Lopez to twenty years of imprisonment, with fifteen years of initial confinement and five years of extended supervision. In framing its sentence, the circuit court considered the seriousness of the offense, Lopez’s character, and the best way to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39–46, 270 Wis. 2d 535, 556–560, 678 N.W.2d 197, 207–208. The circuit court stated that the effect of the assaults on the victims had been very grave. Lopez had betrayed their trust over a long period time and forced them to live a life of lies. The circuit court characterized the victims’ statements about what they suffered as “graphic and poignant and harrowing.” The circuit court said that its sentence was designed to punish Lopez and was necessary for the safety of the community. The circuit court explained its application of the various sentencing considerations in accordance with the framework set forth in *Gallion*, and reached a reasoned and reasonable result. Therefore, we conclude that there would be no arguable merit to an appellate claim that the circuit court misused its sentencing discretion.

In his response, Lopez states that he was offered “a deal of 8 to 10 years, but the attorney never told me that the judge could change the decision.” Lopez’s claim is undermined by the

Record. During the plea hearing, the circuit court explicitly told Lopez that it was not required to accept the recommendations of the lawyers regarding the length of the sentence, and it could impose up to the maximum term of forty years of imprisonment. Based on the transcript of the plea hearing, which shows that Lopez acknowledged that he could be sentenced to up to the maximum prison term, there would be no arguable merit to a legal challenge to the plea on the grounds that Lopez did not know that he could receive a prison term that exceeded ten years.

Lopez argues in his response that he did not have sex with the victims, and asks this court to review the medical records, which he contends will verify his assertion. At the plea hearing, Lopez admitted that he engaged in sexual acts with Z.M.L., who was under the age of sixteen at the time. Although Lopez did not admit that he had sexual intercourse with Z.M.L, the actions to which he admitted constituted the crime of second-degree sexual assault of a child. There would be no arguable merit to an appellate challenge to Lopez's conviction based on his assertion that he did not have sex with the victims.

Finally, Lopez argues in his response that his lawyer should have moved the circuit court for permission to review the medical records of the victims. The circuit court informed Lopez during the plea colloquy that he would not be able to bring motions or raise other defenses if he pled guilty. Lopez told the circuit court that he understood he was waiving those rights. There would be no arguable merit to this claim.

Our independent review of the Record reveals no potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Paulson of further representation of Lopez.

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

IT IS FURTHER ORDERED that Randall E. Paulson, Esq., is relieved of any further representation of Lopez in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals