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DISTRICT I

July 23, 2014

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

2014AP383-CRNM State of Wisconsin v. Jesse M. Jimenez (L.C. #2011CF5008)

Before Fine, Kessler and Brennan, JJ.

Jesse M. Jimenez appeals from a judgment of conviction, entered upon his guilty pleas, on three counts of felony failure to support. Appellant counsel, Hannah B. Schieber, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2011-12).[1] Jimenez was advised of his right to file a response, but has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On June 24, 2004, in Milwaukee County Circuit Court case No. 2003PA6050, Jimenez was ordered to pay $200 per month in child support for his daughters N.C.-J. and I.C.-J. Between June 24, 2004, and August 3, 2011, Jimenez made two payments: a $200 payment in April 2008, and a $790 payment in May 2008.

On October 4, 2011, the State filed a criminal complaint alleging three felony counts of failure to support for the period August 1, 2004, through December 31, 2007; January 1, 2008, through December 31, 2009, and January 1, 2010, through August 31, 2011. Jimenez agreed to resolve the matter through a plea agreement. In exchange for his guilty pleas to the three charges, the State would recommend one year of initial confinement and two years' extended supervision on each count, to be served consecutively, along with twenty-five percent of his prison funds diverted for support. The State would additionally request certain conditions of supervision, most notably Jimenez's stipulation to the amount of his arrears, which would be ordered paid as restitution.

The circuit court conducted a plea colloquy and accepted Jimenez's guilty pleas. It subsequently sentenced him to one year of initial confinement and two years of extended supervision on each count, to be served consecutively. Jimenez stipulated to $22,850.46 in arrears.

Counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Jimenez's guilty pleas and whether the circuit court appropriately exercised its sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

There is no arguable basis for challenging whether Jimenez's plea was knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). He completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 837-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses. The form correctly acknowledged the maximum penalties Jimenez faced and the form, along with an addendum, also specified the constitutional rights he was waiving with his plea. *See* ***Bangert***, 131 Wis. 2d at 262.

The circuit court also conducted a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Though it did not directly inquire whether "any promises, agreements, or threats were made" to get Jimenez to plead guilty, *see* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, the circuit court did inquire of Jimenez whether his plea was "being made to each count freely [and] voluntarily." Further, the plea questionnaire signed by Jimenez contains an acknowledgement that he had not been threatened or coerced into entering his plea. The circuit court also did not provide the immigration warning, required by § 971.08(1)(c), with the exact words of the statute, but the warning provided the necessary information. *See* ***State v. Mursal***, 2013 WI App 125, ¶¶15-16, 351 Wis. 2d 180, 839 N.W.2d 173.

Ultimately, the plea questionnaire and waiver of rights form and addendum and the court's colloquy appropriately advised Jimenez of the elements of his offenses and the potential penalties he faced and otherwise adequately complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that a plea is knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the plea's validity.

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, 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. In seeking to fulfill the sentencing objectives, the 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, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23.

Jimenez, during his allocution, told the circuit court that he did not "go about the child support in the right manner"—that is, making payments through the appropriate agencies so he could be properly credited. The circuit court rejected this explanation, telling Jimenez, "I don't believe a word you're saying." The court explained that in usual failure-to-support cases, it preferred to have the parent out and working, but Jimenez had no interest in working. It noted that Jimenez's stepfather, who ostensibly would have offered Jimenez a job in his roofing business if Jimenez were sentenced to probation, had not hired him at any point prior to sentencing. This might have been because Jimenez indicated a desire to avoid the strenuous work of roofing.

The circuit court observed that Jimenez had a history of getting paid "under the table" in "an attempt to subterfuge the whole concept of paying child support." It commented that Jimenez's record "is replete with completely ignoring your responsibilities since almost day

one." Consequently, the circuit court adopted the State's recommendation and imposed one year of initial confinement and two years' extended supervision on each count, to be served consecutively. It did, however, find Jimenez eligible for both the challenge incarceration and substance abuse programs.

The maximum possible sentence Jimenez could have received was ten and one-half years' imprisonment. The sentence totaling nine years' imprisonment is within the range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the sentencing court's discretion.[2]

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Hannah B. Schieber is relieved of further representation of Jimenez in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] The circuit court had ordered Jimenez to pay the DNA surcharge and declined to award sentence credit until other pending cases were resolved. Appellate counsel filed a postconviction motion in this case, resulting in the circuit court vacating the surcharge and reallocating some of Jimenez's sentence credit to this case. As a result, there is no issue of arguable merit related to either issue.