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September 10, 2014

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

2014AP872-CRNM State of Wisconsin v. Ulices E. Guerrero (L.C. #2011CF1412)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Ulices E. Guerrero appeals a judgment, entered upon his ***Alford***[1] plea, convicting him of first-degree sexual assault (sexual contact) with a child under thirteen. Guerrero's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[2] and ***Anders v. California***, 386 U.S. 738 (1967). Guerrero was advised of his right to file a response but he has not done so. Upon consideration of the no-merit report and an independent review of the record

[1] *See* ***North Carolina v. Alford***, 400 U.S. 25 (1970).

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

as mandated by ***Anders*** and RULE 809.32, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. We therefore affirm the judgment, accept the no-merit report, and relieve Attorney Daniel Goggin II of further representing Guerrero in this matter.

Five-year-old E.M. told her mother that "Uncle Felipe" kissed her and put his tongue on her mouth and vagina, and that he had done it more than one time. Guerrero, an illegal immigrant who used various aliases, was identified as "Uncle Felipe." E.M.'s eight-year-old friend, G.O., told E.M. that Guerrero also had touched her while G.O. was showering. Both girls maintained their claims in their videotaped interviews. Guerrero staunchly protested his innocence and vacillated between entering a plea and trying his case to a jury. After the trial court granted Guerrero several time extensions to consider his decision, he ultimately entered an ***Alford*** plea. The court then granted several adjournments to allow defense counsel to investigate and verify items Guerrero disputed in the presentence investigation report. Those issues resolved, the trial court imposed a bifurcated twenty-five-year sentence, fifteen years' initial confinement and ten years' extended supervision. This no-merit appeal followed.

The no-merit report addresses whether Guerrero knowingly, voluntarily and intelligently entered his ***Alford*** plea. We agree with appellate counsel that this issue has no arguable merit. The plea colloquy was thorough and satisfied ***State v. Bangert***, 131 Wis. 2d 246, 260-62, 389 N.W.2d 12 (1986). Although Guerrero maintained his innocence, the prosecutor and defense counsel acknowledged, and the trial court concluded, that there was strong proof of his guilt. *See* ***State v. Garcia***, 192 Wis. 2d 845, 857-58, 532 N.W.2d 111 (1995). To accommodate Guerrero's limited ability to speak and comprehend the English language, interpreters and a Spanish-language translation of the plea questionnaire were provided and his repeated requests for

additional time to make his decision were honored. The plea questionnaire and waiver of rights form Guerrero signed, coupled with the substantive colloquy, is competent evidence of a knowing and voluntary plea. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987); ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794.

The no-merit report also considers whether a meritorious challenge could be made to the denial of Guerrero's ***Shiffra***/***Green***[3] motion for an in-camera inspection of records suggesting that E.M. previously had made false sexual abuse claims. There could not. His knowing and voluntary ***Alford*** plea waived all nonjurisdictional defects and defenses including claims of a pre-plea constitutional right violation. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

As to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." ***State v. Gallion,*** 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court found that the seriousness of the offense, Guerrero's character, particularly the fact that he had been deported once before for a sexual assault against a child, and the need to protect the public all were significant and weighed heavily in the sentencing determination. The court explained its sentencing rationale at length.

Appellate counsel indicates that Guerrero wants the trial court to review and modify his sentence. A court may modify a sentence on the basis of a new factor or when it concludes its original sentence was "unduly harsh or unconscionable." ***State v. Grindemann***, 2002 WI App

[3] *See* ***State v. Shiffra***, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993), and ***State v. Green***, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298.

106, ¶21, 255 Wis. 2d 632, 648 N.W.2d 507. Guerrero evidently did not identify a new factor and none is apparent. To be unduly harsh, it must be so excessive or unusual as to shock public sentiment. ***Id.***, ¶31. "A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983). In view of the nature of the crime and his sixty-year exposure, there would be no merit to a claim that Guerrero's twenty-five-year sentence is unduly harsh or unconscionable.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved of further representing Guerrero in this matter.

Diane M. Fremgen
Clerk of Court of Appeals,