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DISTRICT II

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

2015AP269-CRNM State of Wisconsin v. Andres Mariscal-Garcia (L.C. #2013CF127)

Before Neubauer, P.J., Reilly, and Gundrum, JJ.

Andres Mariscal-Garcia appeals from a judgment of conviction for repeated sexual assault of the same child. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Mariscal-Garcia received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record and jury trial, we

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

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.

A jury found Mariscal-Garcia guilty of touching a ten-year-old neighbor girl who was at Mariscal-Garcia's house on multiple occasions to play with his children. The occurrences took place between December 2011 and February 2012. The videos of two forensic interviews of the child conducted in December 2012 and May 2013 were played at trial and the child, age twelve at the time of trial, was available for cross-examination. Mariscal-Garcia testified that he was never alone with the child in the house and never touched her sexually. Mariscal-Garcia was sentenced to six years' initial confinement and six years' extended supervision.²

The no-merit report discusses whether the trial court properly exercised its discretion under WIS. STAT. § 908.08 in permitting the video interviews to be played at trial, whether there is arguable merit to a challenge to the sufficiency of the evidence to support the guilty verdict, and whether the sentence was the result of an erroneous exercise of discretion. We accept the conclusion in the no-merit report that there is no arguable merit to any of these potential issues.

The no-merit report is somewhat incomplete. A jury trial has many components which must be examined for the existence of potential appellate issues, e.g., pretrial rulings, jury selection, evidentiary objections during trial, confirmation that the defendant's election to testify is knowingly made or waiver of the right to testify is valid, use of proper jury instructions, propriety of opening statements and closing arguments, the handling of questions from the jury,

² Mariscal-Garcia was convicted of a crime requiring that a mandatory DNA surcharge be imposed under WIS. STAT. § 973.046(1r) (2011-12).

and polling of the jury. The no-merit report fails to give any indication that appointed counsel considered whether those parts of the process give rise to potential appellate issues. It is important to demonstrate review of the entire trial to demonstrate that the no-merit procedure has been followed. *See State v. Allen*, 2010 WI 89, ¶82, 328 Wis. 2d 1, 786 N.W.2d 124 (difficult to know the nature and extent of the court of appeals' examination of the record when the court does not enumerate possible issues that it reviewed and rejected in its no-merit opinion). We examined the jury selection; evidentiary objections overruled during trial; the jury instructions; the opening statements and closing arguments; how the court, without objection from the defense, handled the three questions from the jury; and the polling of the jury. No issue of arguable merit exists from these aspects of the jury trial. We also note that Mariscal-Garcia was provided a Spanish interpreter at all hearings and trial dates.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Mariscal-Garcia further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved from further representing Andres Mariscal-Garcia in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals