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September 20, 2016

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

2014AP2829-CRNM State v. Miguel A. Baez-Rios (L. C. No. 2012CF1405)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Miguel Baez-Rios has filed a no-merit report concluding there is no basis to challenge Baez-Rios's convictions for burglary to a dwelling and second-degree sexual assault, both as parties to a crime. Baez-Rios was advised of his right to respond 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 merit to any issue that could be raised on appeal and summarily affirm.

A criminal complaint alleged Baez-Rios and another individual burglarized a woman's apartment while she was sleeping. Upon being awoken, the woman observed two men with hoods and masks standing in front of her. The woman stated one of the men put a black handgun to her temple and the other man put a knife with a serrated blade to her stomach. The man with the gun continued to hold it against the victim while the other individual went through her belongings, taking money, an ATM card, credit cards, a cell phone, and other personal property. They demanded her ATM personal identification number, and while the man with the gun stayed in the bedroom with her, the other went to her bank to withdraw cash.

The victim reported one of the men was wearing red gloves. After the first individual returned from the bank, the man with the red gloves told the victim to take her clothes off but she refused. He pulled her shirt up around her neck and pulled her bra down exposing her breasts. Both men felt the victim's breasts. The man with the red gloves demanded the victim remove her pants and she again refused. He pulled her pants and underwear off and got on top of her. The other man was holding a gun to the victim's head and put his other hand between her legs and put his finger inside her vagina. The man with the red gloves unbuckled his belt and pulled his pants down to expose his penis. He attempted to put his penis inside the victim's vagina, and was demanding the victim "help him get it in," but she refused. The man's penis touched her vagina but did not penetrate it. The victim repeatedly told the man to stop and eventually she curled up like a ball and threw herself on the floor, begging them to stop. The man with the red gloves then forced her to suck on his penis. Finally, he stopped and pulled up his pants and the men left.

Police subsequently developed information indicating the cell phone taken from the victim could be located at an apartment on Basten Street in Green Bay occupied by Baez-Rios's

girlfriend. When police went to the apartment, a woman answered the door and eventually Baez-Rios came downstairs. The girlfriend told the officers to come in and look around, whereupon the officers noticed personal property of the type described as being taken in the burglary. Officers also observed a Halloween mask and gloves. A search warrant was obtained and officers discovered a black handgun, a knife with a serrated blade, a black winter jacket with a hood, and a cell phone belonging to the victim. Baez-Rios stated he bought the personal property “from a white guy he knows as Ricardo.” Baez-Rios also stated the cell phone was in the same box as the personal property. Baez-Rios also stated that the gloves were from a friend, but then stated the gloves were also in the box purchased from Ricardo.

An Information charged Baez-Rios with burglary; armed robbery; false imprisonment; first-degree sexual assault; fraudulent use of a credit card; and theft, all as a party to a crime and with repeater enhancements. Baez-Rios pled to amended charges of burglary of a dwelling, and second-degree sexual assault, both as a party to a crime but without the repeaters. The remaining four charges were dismissed and read in at sentencing. The circuit court imposed consecutive sentences consisting of five years’ initial confinement and five years’ extended supervision on the burglary count, and ten years’ initial confinement and fifteen years’ extended supervision on the sexual assault count.

There is no manifest injustice upon which Baez-Rios could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 395 (Ct. App. 1986). The circuit court’s plea colloquy, together with the plea questionnaire and waiver of rights form with attachments, informed Baez-Rios of the elements of the offenses, the constitutional rights he waived and the potential penalties. The court specifically advised Baez-Rios that it was not bound by the parties’ agreement and could impose the maximum penalties. The court also advised Baez-Rios

of the deportation consequences outlined in WIS. STAT. § 971.08(1)(c) (2013-14). Baez-Rios conceded a sufficient factual basis supported the convictions. The pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 4 260, 389 N.W.2d 12 (1986). Entry of a valid no contest or guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. The court considered the proper factors, including Baez-Rios's character, the seriousness of the offenses, and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court emphasized the nature of the offenses and the need to protect the public. The court stated, "[T]o call this an outrage or to say that it is horrific or brutal or savage, none of those alone sufficiently capture the horror of what has occurred here. Truly, this is the unthinkable, and so the impact on the community is dramatic." The court also stated, "Short of actual death, this was the worst conceivable series of crimes, and those for which you've been convicted, the home invasion, the burglary, and then the sexual assault, collectively, again, could not have been more damaging, more devastating." The court's sentence was far below the maximum allowable by law and therefore presumptively neither harsh nor excessive. See *Grindemann v. State*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

There is also no arguable issue concerning the circuit court's denial of a motion to suppress Baez-Rios's statements. The court's thorough and detailed written decision correctly concluded Baez-Rios's statements were voluntarily made and there was no coercive or improper police activity. See *State v. Markwardt*, 2007 WI App 242, ¶¶36, 49, 306 Wis. 2d 420, 742 N.W.2d 546. In any event, any conceivable error in denying the suppression motion was

harmless, as the co-defendant's statements thoroughly implicated Baez-Rios in the burglary and sexual assault.

We note the circuit court briefly mentioned the COMPAS risk assessment at sentencing. However, the record shows the remarks were not determinative of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, ___ Wis. 2d ___, 881 N.W.2d 749. Accordingly, any challenge to the sentence based on this issue would lack arguable merit.

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

IT IS ORDERED the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Ralph Sczygelski is relieved of further representing Baez-Rios in this matter.

Diane M. Fremgen
Clerk of Court of Appeals