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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

December 29, 2016

To:

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

Leon W. Todd III
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4116

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Andrea Taylor Cornwall
Asst. State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202

John Christian Serrano
2175 S 21st St #3
Milwaukee, WI 53215-2551

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

2016AP1019-CRNM State of Wisconsin v. John Christian Serrano (L.C. # 2015CM2381)

Before Brash, J.¹

John Christian Serrano appeals from a judgment of conviction, entered upon his guilty plea, on one count of disorderly conduct as an act of domestic abuse. Appellate counsel, Leon W. Todd, III, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Serrano was advised of his right to file a response, but has not

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

responded. Upon this court's independent review of the record, as mandated by *Anders*, and counsel's report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

According to the criminal complaint, Serrano had spent the night at the home of J.A., because he was supposed to watch their daughter the next day. J.A. did not feel well when she woke up, so she refused when Serrano kept insisting they should have sex. She asked him to take their daughter downstairs so she (J.A.) could rest. Serrano then began calling J.A. "lazy" and a "bitch." J.A. asked him to leave, and he began taking things that belonged to J.A., so J.A. called the police. While she was on the phone with the dispatcher, Serrano used both hands and slammed her to the ground. He was then on top of her, and she struggled to break free. Serrano finally got off of her, and the police arrived shortly thereafter.

Serrano was charged with one count of disorderly conduct as an act of domestic abuse. He agreed to resolve the matter through a plea. In exchange for his guilty plea, the State agreed to recommend a probationary sentence. The circuit court accepted Serrano's guilty plea. At sentencing, the circuit court imposed and stayed ninety days in jail and placed Serrano on probation for fifteen months.

The first potential issue appellate counsel identifies is whether Serrano has a basis for withdrawing his plea, either because it was not knowing, intelligent, and voluntary, or because it was not supported by a factual basis. We agree with counsel that there is no arguable merit to challenging the plea.

The circuit court complied with its obligations for taking a guilty plea. *See* WIS. STAT. § 971.08; *see also State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State*

v. Brown, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. These obligations are in place to ensure a defendant’s plea is knowing, intelligent, and voluntary. The circuit court confirmed Serrano understood what was happening and that he had no questions and was not confused. It verified he understood the nature of the charge to which he was pleading and the potential penalties he faced. The circuit court ensured that Serrano was aware of the constitutional rights he was waiving with his plea, that he knew the circuit court was not bound by the terms of the plea agreement, and that he understood the immigration consequences if he was not a United States citizen. There is no arguable merit to a claim that Serrano’s plea was not knowing, intelligent, and voluntary.

The circuit court additionally satisfied itself that there was a sufficient actual basis for the plea. *See* WIS. STAT. § 971.08(1)(b). It inquired whether it could use the facts alleged in the complaint as the factual basis. Defense counsel clarified for the court that Serrano agreed he had been calling J.A. names and being loud. Counsel further noted that Serrano agreed that he put his hands on J.A. and pushed her, but disputed the violent way the complaint described his actions. Serrano personally acknowledged that the circuit court could use the facts, as modified by counsel’s explanation, as the factual basis for the plea. These modified facts are sufficient to form a factual basis for a conviction of “a person who, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.” *See* WIS. STAT. § 947.01 (disorderly conduct); WIS JI—CRIMINAL 1900. Thus, there is no arguable merit to a claim that there was an insufficient factual basis for his plea.

The other potential issue counsel addresses is whether the circuit court may have 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 id.*

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. It noted that Serrano had a previous domestic abuse referral for the same reason: he became upset when his partner declined to have sex with him. The circuit court additionally noted that whatever the scope of it was, the fact that Serrano used physical violence was disturbing. The circuit court did, however, also note that Serrano seemed genuinely remorseful and had a plan for getting his life on track. The circuit court determined that a long probation sentence would give Serrano time to complete the conditions of his probation and would hopefully aid his rehabilitation efforts.

The ninety-day imposed and stayed imprisonment sentence, although the maximum, 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 would not shock the public's sentiment under the circumstances. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The probationary sentence is likewise within the maximum imposed by law, *see* WIS. STAT. § 973.09(2)(a)1.b., and the terms

of probation are appropriate. There would be no arguable merit to a challenge to the court's sentencing 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 Leon W. Todd, III, is relieved of further representation of Serrano in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

² We additionally note that the circuit court made the necessary predicate findings for deeming Serrano's offense to be an act of domestic abuse and for imposing the domestic abuse surcharge. *See* WIS. STAT. § 973.055(1)(a)2.; *see also* WIS. STAT. § 968.075.