



OFFICE OF THE CLERK
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

March 17, 2017

To:

Hon. Jeffrey A. Kremers
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Andrew J. Jarmuz
P.O. Box 24537
Edina, MN 55424

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Eduardo L. Rodriguez 556851
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2016AP1273-CRNM State of Wisconsin v. Eduardo L. Rodriguez (L.C. # 2014CF5658)

Before Brennan, P.J., Kessler and Brash, JJ.

Eduardo L. Rodriguez appeals a judgment convicting him of one count of child abuse, intentionally causing harm, as a repeater. Appointed appellate counsel Andrew J. Jarmuz filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Rodriguez was advised of his right to

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

respond, but he did not do so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Rodriguez could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Rodriguez's guilty plea was not knowingly, intelligently and voluntarily entered. The circuit court must conduct a colloquy with a defendant before accepting a guilty or no-contest plea to ensure that the defendant is knowingly, intelligently and voluntarily waiving the right to trial. *See State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Before accepting a plea, the circuit court must ascertain that the defendant understands the elements of the crime to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08. The circuit court may refer to a plea colloquy and waiver-of-rights form which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing "the extent and degree of the colloquy otherwise required between the trial court and the defendant." *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

At the plea hearing, the prosecutor stated the plea agreement on the record; the State dismissed and read in two counts of disorderly conduct in exchange for Rodriguez's guilty plea to the child abuse charge. The State also agreed to recommend a six-year term of imprisonment, with three years of initial confinement and three years of extended supervision. The circuit court informed Rodriguez that it was free to sentence him up to the maximum term of imprisonment regardless of the plea agreement. *See State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. Rodriguez said that he understood.

The circuit court explained to Rodriguez that he faced a maximum term of ten years of imprisonment, which included four years for being convicted as a repeater. The circuit court asked Rodriguez whether he had reviewed the plea questionnaire and waiver of rights form and whether he understood that by signing the form he was telling the court that he wished to give up all of the constitutional rights listed on the form and plead guilty to the charge. Rodriguez said that he understood. The circuit court also asked Rodriguez whether he understood what the prosecutor would have to prove to convict him if he had a trial. Rodriguez said that he did. The circuit court asked Rodriguez whether his lawyer had explained the elements of the crime to him, and Rodriguez said that he had.

The circuit court informed Rodriguez that if he was not a citizen of the United States of America, he could be deported if he pled guilty. *See State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. The circuit court asked Rodriguez whether the facts alleged in the criminal complaint were accurate and whether they could serve as a factual basis for the plea. Rodriguez said that they could. The circuit court asked Rodriguez whether he had previously been convicted of burglary because a prior conviction was required to substantiate the repeater enhancement. Rodriguez said that he had. The circuit court explained to Rodriguez that it could consider the facts of the dismissed charges because they were being read in for sentencing, but that the charges would not change the maximum possible penalty. Rodriguez said that he understood. The circuit court ascertained that no promises or threats had been made to Rodriguez regarding the plea. *See Brown*, 293 Wis. 2d 594, ¶35.

Although the circuit court's plea colloquy was sparing, it served to adequately apprise Rodriguez of the rights he was waiving by entering his plea and the consequences of his plea, when considered in conjunction with the information contained on the plea questionnaire and

waiver-of-rights form. Therefore, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Rodriguez to five years and six months of imprisonment, with thirty months of initial confinement and thirty-six months of extended supervision, to be served consecutively to a sentence that Rodriguez was already serving. The circuit court considered Rodriguez's prior criminal conduct and his failure to complete probation in the past. The court considered as aggravating the fact that Rodriguez had both harmed the child physically and had intentionally humiliated the child by making him lick Rodriguez's foot, the floor and the wall, which was intended to make the child feel powerless. The circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Andrew J. Jarmuz from further representation of Rodriguez.²

² On November 21, 2016, we granted Attorney Andrew J. Jarmuz's motion to withdraw. On December 13, 2016, we received a letter that we construed as a motion for reconsideration from the State Public Defender's Office, which explained that Attorney Jarmuz's motion was based on his mistaken belief that he could no longer represent Rodriguez because Attorney Jarmuz had moved his law practice to Minnesota. Based on the State Public Defender's explanation that Attorney Jarmuz was not required to withdraw, we vacate our November 21, 2016 order allowing Attorney Jarmuz to withdraw.

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

IT IS FURTHER ORDERED that Attorney Andrew J. Jarmuz is relieved of any further representation of Rodriguez in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals