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DISTRICT II

June 21, 2017

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

2016AP2246-CRNM State of Wisconsin v. Julio R. Alvarez (L.C. # 2015CF695)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Julio R. Alvarez appeals from a judgment convicting him of robbery by threat of force as a party to a crime and as a repeater. Alvarez's appellate counsel filed a no-merit report pursuant to Wis. Stat. Rule 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Alvarez received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

In January 2016, Alvarez pled guilty to robbery by threat of force as a party to a crime and as a repeater. The charge stemmed from allegations that he and his girlfriend robbed a gas station in the City of Waukesha. Several additional charges were dismissed and read in.² The circuit court imposed a sentence of seven years of initial confinement followed by five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Alvarez's guilty plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Alvarez that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment detailing the elements of the offense.³ We agree with counsel that a challenge to the entry of Alvarez's guilty plea would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197

² The additional charges were (1) felony bail jumping as a repeater, (2) possession with intent to deliver cocaine, (3) maintaining a drug trafficking place, and (4) possession of narcotic drugs.

³ Alvarez placed his initials next to the elements for robbery by use of force instead of the elements for robbery by threat of force. Despite this initial confusion, the circuit court made clear that, in Alvarez's case, the State would have to prove that there was some threat of force. Alvarez indicated that he understood this. The no-merit report also confirms that Alvarez "understood the elements of the crime for which he stands convicted and had no dispute with them."

(citation omitted). In making its decision, the court considered the seriousness of the offense, Alvarez's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Alvarez's prior record and the fact that he was out on bail at the time of the offense, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Alvarez's sentence would lack arguable merit.

Finally, the no-merit report addresses whether a basis exists for a motion for sentence modification. The no-merit report indicates that Alvarez has not been able to point to any fact that might constitute a "new factor" under *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975), warranting sentence modification. We are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.⁴ Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Michael J. Backes of further representation in this matter.

Upon the foregoing reasons,

⁴ Prior to entering his plea, Alvarez challenged the sufficiency of the complaint. He forfeited this issue by pleading guilty. *See State v. Kelty*, 2006 WI 101, ¶18 n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (a plea forfeits all nonjurisdictional defects, including constitutional claims). Accordingly, we do not discuss it further.

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 Michael J. Backes is relieved of further representation of Alvarez in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals