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DISTRICT II

May 16, 2018

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

2017AP1189-CRNM State of Wisconsin v. Pedro J. Rivera (L.C. # 2015CF1064)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Pedro J. Rivera appeals from a judgment convicting him of armed robbery as party to the crime contrary to WIS. STAT. § 943.32(2) (2015-16).¹ Rivera's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967).

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

Rivera received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Rivera's guilty plea was knowingly, voluntarily, and intelligently entered and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

Our review of the record confirms appellate counsel's opinion that the plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis.2d 161, 765 N.W.2d 794. Additionally, the plea questionnaire form Rivera signed is competent evidence of a knowing and voluntary plea. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). The record discloses that Rivera's guilty plea was knowingly, voluntarily, and intelligently entered, see *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis in the criminal complaint, see *State v. Harrington*, 181 Wis. 2d 985,

989, 512 N.W.2d 261 (Ct. App. 1994). We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Rivera's guilty plea.²

We further agree with appellate counsel that the circuit court properly exercised its sentencing discretion in imposing a twenty-year term (ten years of initial confinement and ten years of extended supervision). See *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In fashioning the sentence, the court considered the seriousness of the offense, Rivera's rehabilitation needs, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight of the sentencing factors was within the circuit court's discretion. See *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. The sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. Rivera stipulated to restitution to the victim. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for

² There are two issues lacking arguable merit relating to the entry of Rivera's guilty plea. First, the circuit court did not give the deportation warning to Rivera during the plea colloquy. The presentence investigation report states that Rivera was born in Illinois. Therefore, he is not in danger of deportation as a result of this felony conviction. No issue of arguable merit could arise from this omission. See *State v. Bedolla*, 2006 WI App 154, ¶5, 295 Wis. 2d 410, 720 N.W.2d 158.

Second, Rivera entered his guilty plea as party to the crime, but the circuit court did not review the elements of party to the crime liability during the plea colloquy. This issue lacks arguable merit for appeal because the criminal complaint, which was the agreed upon factual basis for Rivera's plea, describes Rivera's direct commission of the armed robbery. Where the defendant entered a plea as party to the crime but directly committed the crime, there is no error in failing to give a superfluous explanation of party to the crime liability during the plea colloquy. *State v. Brown*, 2012 WI App 139, ¶¶13-15, 345 Wis. 2d 333, 824 N.W.2d 916.

appeal. 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, affirm the judgment of conviction, and relieve Attorney Thomas J. Erickson of further representation of Rivera in this matter.

Upon the foregoing reasons,

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 Thomas J. Erickson is relieved of further representation of Pedro Rivera in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals