



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 II

September 5, 2018

To:

Hon. Kent R. Hoffmann
Circuit Court Judge
615 N. 6th St.
Sheboygan, WI 53081

Joel Urmanski
District Attorney
615 N. 6th St.
Sheboygan, WI 53081

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

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

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

Norberto Garcia, #650524
Jackson Corr. Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2017AP1991-CRNM State of Wisconsin v. Norberto Garcia (L.C. #2016CF514)

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).

Norberto Garcia appeals from a judgment of conviction for two counts of felony bail jumping. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967). Garcia received a copy of the

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

report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Garcia was charged with five counts of felony bail jumping for violations of conditions for house arrest and no contact with minors in a bail bond. He entered a guilty plea to two counts with the remaining three counts dismissed as read ins at sentencing. The prosecution agreed to recommend concurrent sentences of eighteen months' initial confinement and eighteen months' extended supervision to be served consecutive to the sentence in the case from which the bail bond issued. At sentencing, the prosecution made the agreed upon recommendation. Garcia was sentenced to concurrent terms of one year of initial confinement and one year of extended supervision. The sentence was made consecutive to the sentence in the other case.²

The no-merit report addresses the potential issues of whether Garcia's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion or was unduly harsh or excessive. The plea colloquy was quite abbreviated with the circuit court relying heavily on previous advisements given to Garcia at an initial

² Garcia's plea to multiple counts resulted in the assessment of multiple mandatory DNA surcharges totaling \$500, and that potential financial obligation was not addressed during the plea colloquy. We previously placed these appeals on hold awaiting the Wisconsin Supreme Court's decision in *State v. Odom*, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The *Odom* appeal was voluntarily dismissed before oral argument in the supreme court. These appeals were then held for a decision in *State v. Freiboth*, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d __ (2015AP2535). *Freiboth* holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. *Id.*, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

appearance before a court commissioner two and one-half months earlier, the plea questionnaire, and nonspecific references to the maximum penalties and the elements of the offense.³ Even if we question whether the colloquy was sufficient to establish that Garcia's plea was knowingly entered, there is no arguable basis to pursue plea withdrawal. The no-merit report indicates that Garcia could not make an assertion that he did not understand the specific information that might have been missing. *See State v. Brown*, 2006 WI 100, ¶62, 293 Wis. 2d 594, 716 N.W.2d 906 (a motion to withdraw a plea is only meritorious if the defendant can assert that he did not know or understand that aspect of his plea that is related to a deficiency in the plea colloquy). Thus, we agree with the no-merit report's analysis and conclusion and will not discuss the plea or sentence further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Garcia further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved from further representing Norberto Garcia in this appeal. *See* WIS. STAT. RULE 809.32(3).

³ The circuit court simply asked Garcia: "As to Counts 1 and 4 of the amended information, do you understand those charges and the maximum penalties they provide?" and whether he discussed the elements of the offenses with his attorney and "do you understand those elements at this time?" The element of the offense and maximum penalties were listed on the plea questionnaire which the circuit court confirmed had been signed, read, and understood by Garcia.

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

Sheila T. Reiff
Clerk of Court of Appeals