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September 19, 2018

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

2016AP1644-CRNM State of Wisconsin v. Pedro J. Garcia (L.C. #2015CM1017)
2016AP1645-CRNM State of Wisconsin v. Pedro J. Garcia (L.C. #2015CF1043)

Before Reilly, P.J.[1]

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).

In these consolidated matters, Pedro J. Garcia appeals from judgments of conviction entered upon his no contest pleas to four misdemeanors across two cases.[2] Garcia's appellate

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] 2016AP1644-CRNM arises from Eau Claire Circuit Court case No. 2015CM1017, while 2016AP1645-CRNM arises from Eau Claire Circuit Court case No. 2015CF1043.

counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738 (1967). Garcia received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgments 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.

As part of a negotiated settlement, Garcia pled no contest to the following misdemeanors, all charged as acts of domestic abuse, *see* WIS. STAT. § 973.055(1), and with the WIS. STAT. § 939.62 repeater enhancer: bail jumping, battery, and two counts of knowingly violating a domestic abuse injunction. The State successfully moved to dismiss and read in the seven remaining counts in 2015CF1043 as well as two separate pending circuit court cases and agreed to treat as uncharged read-ins about 500 telephone calls which potentially violated Garcia's domestic abuse injunction. The parties agreed to jointly recommend a three-year term of probation to run consecutive to sentences Garcia was then serving. The circuit court adopted the joint recommendation and withheld sentence in favor of three years' probation. Garcia appeals.

The no-merit report addresses whether Garcia's pleas were knowingly, voluntarily and intelligently entered. During the plea hearing the circuit court fulfilled each of the duties set forth in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record shows that,

with one exception,[3] the plea-taking court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon the defendant's signed plea questionnaire. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). No issue of merit exists from the plea taking.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. We conclude that a challenge to Garcia's term of probation lacks arguable merit because the circuit court followed the parties' joint sentencing recommendation. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

Our independent review of the record reveals no other potential issues of arguable merit.[4] Therefore,

[3] The circuit court failed to provide the deportation warning set forth in WIS. STAT. § 971.08(1)(c). This failure does not present an arguably meritorious issue for appeal as there is no indication that Garcia's pleas are likely to result in his deportation, exclusion from admission to this county, or denial of naturalization. *See* § 971.08(2). The competency evaluation suggests that Garcia is a U.S. citizen.

[4] Four mandatory DNA surcharges were assessed on Garcia's judgments of conviction. Because of the multiple DNA surcharges, we previously put this appeal on hold pending 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. This case was then held for a decision in ***State v. Freiboth***, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (No. 2015AP2535-CR). ***Freiboth*** holds that a plea-taking 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.

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Melissa Petersen is relieved from further representing Pedro J. Garcia in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals