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DISTRICT II

September 26, 2018

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

2018AP343-CRNM	State of Wisconsin v. Jerry Roman Pinedo (L.C. #2015CF659)
2018AP344-CRNM	State of Wisconsin v. Jerry Roman Pinedo (L.C. #2015CF1222)
2018AP345-CRNM	State of Wisconsin v. Jerry Roman Pinedo (L.C. #2017CF50)

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

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 cases, Jerry Roman Pinedo appeals from two judgments convicting him after revocation of his probation and from one judgment entered upon his guilty plea. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Pinedo was served with a copy of the report and has exercised

his right to file a response. Counsel filed a supplemental report. After reviewing the no-merit reports, the response, and the record, we conclude there are no issues with arguable merit for appeal and therefore summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

Kenosha County case Nos. 2015CF659 and 2015CF1222: In November 2015, Pinedo pled guilty to false imprisonment, intimidation of a victim, attempted strangulation and suffocation, and battery, all with repeater and domestic abuse modifiers. Twenty-seven other charges with domestic abuse overtones were dismissed. The court withheld sentence on the four counts and placed Pinedo on four years of probation. In June 2016, Pinedo pled guilty to possession of narcotic drugs as a repeater. The court once again withheld sentence and ordered Pinedo to serve fifteen months of probation. In March 2017, his probation was revoked. He received a global sentence of thirteen years' initial confinement (IC) and nine and one-half years' extended supervision (ES).

Kenosha County case No. 2017CF50: In April 2017, Pinedo pled guilty to battery as a domestic abuse repeater and possession of drug paraphernalia. Three counts of domestic abuse-related offenses were dismissed and read in. His sentence on the two charges was made concurrent with the sentences on which his probation had been revoked. This no-merit appeal followed.

The no-merit report correctly observes that Pinedo may not challenge the underlying conviction in this appeal from a sentence after revocation. *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). He also may not use an appeal to challenge the validity of the probation revocation decision, as that is done by certiorari to the court of conviction. ***State ex. rel Johnson v. Cady***, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971).

The no-merit report also addresses the potential issues of whether Bane's guilty plea was freely, voluntarily, and knowingly entered and whether the sentence was unduly harsh or otherwise the result of an erroneous exercise of discretion. With one exception, our review of the record satisfies us that the no-merit report properly and thoroughly analyzes these issues as without merit, such that—but for the one exception—we need address them no further.

During the plea colloquy, the circuit court failed to give Pinedo the deportation warning WIS. STAT. § 971.08(1)(c) requires. The failure to do so is not grounds for relief, however, unless the defendant can show that his or her plea is likely to result in deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2). Pinedo did not raise that prospect in his response to the no-merit report, and the presentence investigation report indicates he was born in Illinois. Thus, while in this case there is no merit to a motion to withdraw the plea based on the failure to give the deportation warning, we remind the circuit court that giving the statutory warning is the better course.

None of the issues Pinedo raises in his response have any arguable merit. He first complains that when the court reduced a portion of his ES from three years to two in response to a letter from the Department of Corrections, he should have been "returned to court." The DOC letter did not trigger a hearing of any kind. The court simply penned a notation on the letter for the clerk to amend the judgment for the count in question to two years' ES.

He also asserts that the prosecutor "lied" at his sentencing after revocation by stating that one of his probation violations was having been found with, and admitting he had, drugs. The prosecutor did not lie; she was reading from the revocation summary which she did not author.

Pinedo next takes issue with statements and charges in the complaint for case No. 2015CF659. He also claims that, due to conversations with an earlier appellate attorney, he did not understand the scope of an appeal after revocation and, further, was "afraid to pursue an appeal" because of the thirty-two counts he faced in that case. Once a defendant is sentenced after revocation, it is too late to challenge the underlying conviction. *See* ***Drake***, 184 Wis. 2d at 399. The public defender's office verified to Pinedo that his former appellate counsel had sent him a letter regarding his appellate rights should he be revoked.

Based upon our independent review of the record, we conclude that counsel's analysis of those issues is correct and that an appeal on either of them would lack arguable merit. Our independent review of the record discloses no other potential basis for a challenge to the conviction. Any further appellate proceedings would be without arguable merit within the meaning of ***Anders*** and WIS. STAT. RULE 809.32. Therefore,

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

IT IS FURTHER ORDERED that Attorney Cheryl A. Ward is relieved from further representing Pinedo in this appeal. *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