

a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967). Aca Moyotl 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 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.

In June 2016, the female victim, who was then thirteen-years old and was related to Aca Moyotl, reported that about three years earlier, when she was in the fifth grade, Aca Moyotl had touched her genitalia, forced her to touch his penis, and performed vaginal and anal intercourse on numerous occasions. The State filed a complaint charging Aca Moyotl with one count of repeated sexual assault of the same child, a Class B felony, contrary to WIS. STAT. § 948.025(1)(d) (2013-14). Aca Moyotl pled guilty to the charge and the parties jointly requested a presentence investigation report (PSI). Both parties remained free to argue sentence. The circuit court imposed a thirty-five-year bifurcated sentence, with twenty years of initial confinement and fifteen years of extended supervision. Aca Moyotl appeals.

Appellate counsel's no-merit report addresses whether Aca Moyotl's guilty plea was knowingly, intelligently, and voluntarily entered. The record shows that the circuit 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

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

circuit court properly relied upon Aca Moyotl's signed plea questionnaire. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). A Spanish language interpreter was present at all court proceedings. The circuit court ascertained from Aca Moyotl and trial counsel that they had ample opportunity to discuss the case, Aca Moyotl's options, the plea paperwork, and the PSI with the assistance of an interpreter. We agree with appointed counsel that a challenge to the entry of Aca Moyotl's guilty plea would lack arguable merit.

Appellate counsel's 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 (citation omitted). The circuit court's sentencing remarks show that it considered the seriousness of the offense, Aca Moyotl's character, 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 court determined that the offense was aggravated because it involved Aca Moyotl having intercourse with a ten-year-old child who trusted him. The circuit court considered Aca Moyotl's positive character traits, including his lack of a criminal record and that he was a hard worker who would send "money back to his parents who he cares about," along with the favorable risk assessment submitted by the defense. The circuit court observed that all of the recommendations presented, including the defendant's recommendation, included prison time. The court rejected probation after determining that the defendant needed treatment in a confined setting and that probation would unduly depreciate the seriousness of the offense. The court stated that its sentence was the minimum amount of custody needed to further its objectives of punishment, protection of the community, rehabilitation of the defendant, and deterrence. Under the circumstances, it cannot

reasonably be argued that Aca Moyotl's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Aca Moyotl's sentence would lack arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Aca Moyotl on appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Urszula Tempska is relieved from further representing Jose Guadalupe Aca Moyotl in this appeal. 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