



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 I

October 2, 2019

To:

Hon. Michael J. Hanrahan
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Room G-8
Milwaukee, WI 53233

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

Angela Conrad Kachelski
Kachelski Law Office
7101 N. Green Bay Ave, Suite 6A
Milwaukee, WI 53209

Angel L. Sanchez 478735
Redgranite Correctional Inst.
P.O. Box 925
Redgranite, WI 54970-0925

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

2018AP794-CRNM State of Wisconsin v. Angel L. Sanchez (L.C. # 2016CF5203)

Before Brash, P.J., Kessler and Fitzpatrick, 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).

Angel L. Sanchez appeals from a judgment of conviction entered after a jury found him guilty of three domestic abuse crimes: (1) stalking, where the defendant had a previous conviction for a crime involving the same victim within seven years; (2) disorderly conduct; and (3) knowingly violating a domestic abuse order. *See* WIS. STAT. §§ 940.32(2), 940.32(2m)(b),

973.055(1), 947.01(1), and 813.12(8)(a) (2015-16).¹ Sanchez's appellate counsel, Angela C. Kachelski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Sanchez filed a response to that no-merit report, and Kachelski filed a supplemental no-merit report.² We have now reviewed the reports and the response, and we have independently reviewed the record as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

Sanchez was charged with six crimes related to incidents involving his former girlfriend. His case proceeded to a jury trial in June 2017. The jury found him guilty of the three aforementioned crimes at issue in this appeal. It acquitted him of one additional crime in Milwaukee County Circuit Court Case No. 2016CF5203, and it also acquitted him of two crimes in Milwaukee County Circuit Court Case No. 2016CM3685.³ The trial court imposed the maximum sentence for each of the three crimes of which Sanchez was convicted, which will require Sanchez to serve a total of four years of initial confinement and three years of extended supervision.

The thorough no-merit report discusses the pretrial proceedings, jury trial, and sentencing. It considers issues including: (1) the withdrawal of two trial attorneys;

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² Our review of this case was delayed after we held this appeal in abeyance pending the Wisconsin Supreme Court's consideration of an appeal concerning jury instruction WIS JI—CRIMINAL 140, which was used at Sanchez's trial. Based on the Wisconsin Supreme Court's resolution of that appeal, there would be no arguable merit to pursue postconviction proceedings based on the use of that jury instruction in this case. See *State v. Trammell*, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564.

³ Accordingly, Sanchez has not appealed Milwaukee County Circuit Court Case No. 2016CM3685.

(2) Sanchez's speedy trial demands; (3) the defense's pretrial double jeopardy motion; (4) amendment of the information; (5) voir dire; (6) opening statements; (7) the admission of a video of one of the crimes; (8) Sanchez's waiver of the right to testify; (9) jury instructions; (10) closing argument; (11) sufficiency of the evidence; (12) the trial court's exercise of sentencing discretion; and other issues. The no-merit report thoroughly addresses each of those issues, providing citations to the record and relevant authority. This court is satisfied that the no-merit report properly analyzes the issues it raises, and based on our independent review of the record, we agree with counsel's assessment that none of those issues presents an issue of arguable merit.

In his response to the no-merit report, Sanchez asserts that the no-merit report should be rejected because he was denied the effective assistance of trial counsel in two ways.⁴ To prove a claim of ineffective assistance of counsel, a defendant must show that his lawyer performed deficiently and that this deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Id.* at 697.

Sanchez's first allegation is that the three trial attorneys who represented him performed deficiently because they did not show him a video of a November 13, 2015 incident involving Sanchez and the victim that took place on the freeway.⁵ That incident led to Sanchez's

⁴ Sanchez also appears to object to the no-merit procedure generally. Sanchez has not raised an issue of arguable merit. We are examining this no-merit appeal consistent with WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967).

⁵ As the no-merit report explains, Sanchez had three successive trial attorneys representing him. His first two attorneys were both allowed to withdraw after separate incidents with Sanchez demonstrated a breakdown in each attorney-client relationship.

conviction for misdemeanor disorderly conduct in 2016, and the incident was one of those identified when Sanchez was subsequently charged with stalking in the case currently before this court. Sanchez asserts that, if any of his attorneys had shown him the video of the November 13, 2015 incident, he would have accepted the State's plea offer instead of going to trial. Similarly, Sanchez claims that his attorneys did not share recordings of all of the 911 calls or videos, and he claims that he would have pled guilty if he had reviewed those recordings.

Appellate counsel refutes Sanchez's claims in her supplemental no-merit report. First, she indicates that Sanchez raised his concern about the November 13, 2015 video with her. Appellate counsel explains: "[Sanchez] admitted to [appellate] counsel that he did review the video of the incident when he was charged with disorderly conduct, among other things, in a previous case. He reviewed that video prior to entering the plea in that case." Appellate counsel also indicates in her accompanying affidavit that she spoke with the attorney who represented Sanchez at trial, and he told appellate counsel that "he did review all of the discovery with Mr. Sanchez and that he specifically discussed the fact that the video would be detrimental to their defense." Finally, appellate counsel points to evidence in the record, including representations made by Sanchez's first two attorneys when they moved to withdraw, that Mr. Sanchez was not interested in accepting a plea deal.

We conclude there would be no arguable merit to pursuing postconviction proceedings based on Sanchez's claims that he did not review discovery including audio and video recordings and would have pled guilty if he had reviewed those materials. Not only does appellate counsel's affidavit effectively refute Sanchez's claims, the pretrial transcripts refute Sanchez's assertion that he was willing to consider entering a plea agreement with the State.

The second ineffective assistance claim that Sanchez makes concerns the attorney who represented him at trial. Trial counsel filed a pretrial motion challenging the inclusion of the November 13, 2015 incident as part of the stalking charge, claiming a double jeopardy violation. Trial counsel also argued that several of the other charges against Sanchez should be dismissed based on double jeopardy. At the hearing on the motion—which the trial court denied—the prosecutor indicated that, after examining the relevant case law, he realized that he could have charged Sanchez with an enhanced stalking charge because he was convicted of a crime involving the same victim within the last seven years (i.e., misdemeanor disorderly conduct related to the November 13, 2015 incident). *See* WIS. STAT. § 940.32(2m)(b) (2015-16). Accordingly, the prosecutor moved to amend the information, which would increase the penalty of the stalking charge from a Class I felony to a Class H felony. Although trial counsel opposed the motion, the trial court granted the State’s motion and the information was amended before trial.

Sanchez argues that trial counsel performed deficiently by filing a meritless double jeopardy motion and that he was prejudiced because, in the course of analyzing the motion, the prosecutor realized that he could file an enhanced stalking charge. We conclude that Sanchez has not raised an issue of arguable merit. Even if we assume that the motion lacked merit and that trial counsel performed deficiently by filing a meritless motion, that deficient performance did not prejudice Sanchez. To demonstrate prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. Regardless of whether Sanchez brought a meritless motion, a meritorious motion, or any motion at all, the State could have charged him with enhanced stalking because there was a prior conviction with the same victim

within the last seven years. Although the State did not do so initially, it had the option of moving to amend the charge at any time, including during the trial. *See* WIS. STAT. § 971.29(2). The fact that the State chose to move to amend the charge after it reviewed case law related to Sanchez's motion does not change our conclusion that there would be no arguable merit to asserting that the result of the proceeding would have been different but for the filing of the allegedly meritless double jeopardy motion.

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 Sanchez further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Angela C. Kachelski is relieved from further representing Angel L. Sanchez 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