



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/II

December 18, 2019

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Br. 6
821 W. State Street
Milwaukee, WI 53233

Hon. Jeffrey A. Wagner
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Andrea Taylor Cornwall
Asst. State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202

Karen A. Loebel
Deputy District Attorney
821 W. State Street
Milwaukee, WI 53233

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

Herminio Vega 228337
Jackson Correctional 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:

2018AP1520-CRNM	State of Wisconsin v. Herminio Vega (L.C. #2015CF4378)
2018AP1521-CRNM	State of Wisconsin v. Herminio Vega (L.C. #2015CF5305)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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 appeals, Herminio Vega appeals from judgments¹ convicting him on his guilty pleas of two counts of substantial battery (one count including use of a dangerous weapon) contrary to WIS. STAT. § 940.19(2) (2015-16)² and felony bail jumping contrary to WIS. STAT. § 946.49(1)(b) (2015-16). Vega also appeals from orders³ denying his postconviction motions seeking plea withdrawal.⁴

Vega's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders v. California*, 386 U.S. 738 (1967). Vega received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments and orders because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The circuit court sentenced Vega as follows: in appeal No. 2018AP1520-CRNM, five years for substantial battery with use of a dangerous weapon, and in appeal No. 2018AP1521-CRNM, concurrent terms of two years for substantial battery and six years for felony bail

¹ The judgments of conviction were entered by the Honorable Ellen Brostrom.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

³ The orders denying Vega's postconviction motions were entered by the Honorable Jeffrey Wagner.

⁴ Vega's stated grounds for plea withdrawal were eliminated by this court's decision in *State v. Freiboth*, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643 (no duty to inform a defendant during the plea colloquy that multiple DNA surcharges will be imposed), *review denied*, 2018 WI 111, 384 Wis. 2d 465, 922 N.W.2d 293.

jumping, to be served consecutively to the sentence in 2018AP1520-CRNM. Vega received sentence credit.

The no-merit report addresses the following possible appellate issues: (1) whether Vega's guilty pleas were knowingly, voluntarily, and intelligently entered and (2) whether the circuit court misused its sentencing discretion. After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly concludes that these issues are without arguable merit.

The thorough plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. “[A] guilty plea waives all nonjurisdictional defects and defenses.” *State v. Popp*, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471 (citation omitted). The circuit court also engaged in a proper exercise of sentencing discretion after considering various sentencing factors. See *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing factors discussed).

In addition to the issues discussed above, we have independently reviewed the record. We see no arguable merit to a challenge to the circuit court's order denying Vega's WIS. STAT. § 973.195 petition for sentence adjustment⁵ because sentence adjustment would not be in the public interest. The circuit court considered the gravity of the offenses, the extent of Vega's violence against the victim, that Vega exposed his children to a violent attack on their mother

⁵ The petition for sentence adjustment was filed in relation to Milwaukee County Circuit Court case No. 2015CF4738 (appeal No. 2018AP1520-CRNM).

and graphically described to the children the further bodily harm he would inflict on their mother, and Vega's conduct issues in prison. The court declined to adjust the sentence because doing so would unduly depreciate the seriousness of Vega's conduct and defeat the purposes of the sentence as expressed by the sentencing judge. We conclude that the denial of sentence adjustment was a proper exercise of discretion and does not present an issue with arguable merit. *See State v. Stenklyft*, 2005 WI 71, ¶112, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring/dissenting).

Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgments of conviction and orders denying the postconviction motions, and relieve Attorney Brian Hagner of further representation of Vega in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments and orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian Hagner is relieved of further representation of Herminio Vega in these matters.

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

Sheila T. Reiff
Clerk of Court of Appeals