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DISTRICT I

January 13, 2020

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

2018AP2451-CRNM State of Wisconsin v. Antonio Romo (L.C. # 2017CF161)

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

Antonio Romo appeals a judgment of conviction entered upon his no-contest pleas to two counts of delivery of more than five grams of cocaine but less than fifteen grams of cocaine. His appellate counsel, Attorney Jorge R. Fragoso, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).¹ Romo did not file a

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

response. Based upon our review of the no-merit report and the record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Romo sold approximately fourteen grams of cocaine to a confidential police informant on March 19, 2013. On May 8, 2013, Romo again sold approximately fourteen grams of cocaine to the same confidential police informant. Romo was arrested after the second sale. The State charged Romo with two counts of delivery of more than five grams of cocaine but less than fifteen grams of cocaine and further charged that each crime was a second or subsequent offense.

Romo decided to resolve the charges with a plea agreement. He pled no contest to two counts of delivery of more than five grams of cocaine but less than fifteen grams of cocaine, and the State moved to dismiss the allegation that the crimes were second or subsequent offenses. The State also agreed not to make a sentencing recommendation.

At sentencing, the maximum penalties that Romo faced for each conviction were a \$50,000 fine and a fifteen-year term of imprisonment bifurcated as ten years of initial confinement and five years of extended supervision. *See* WIS. STAT. §§ 961.41(1)(cm)2. (2013-14), 939.50(3)(e) (2013-14), 973.01(2)(b)5. (2013-14), 973.01(2)(d)4. (2013-14). For the March 2013 offense, the circuit court imposed a thirteen-year term of imprisonment bifurcated as eight years of initial confinement and five years of extended supervision. For the May 2013 offense, the circuit court imposed a consecutive, evenly bifurcated six-year term of imprisonment. The circuit court stayed the sentences and placed Romo on probation for a period of five years as to both offenses. The circuit court also awarded Romo the 122 days of sentence credit that he

requested and ordered that the time count towards his imposed and stayed sentence for the March 2013 offense.

In the no-merit report, appellate counsel examines whether Romo could pursue an arguably meritorious challenge to his no-contest pleas. We are satisfied that appellate counsel properly analyzed this issue. The circuit court conducted a plea colloquy that complied with the circuit court's obligations when accepting a plea other than not guilty. *See* WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record—including the plea questionnaire and waiver of rights form and addendum, the attached document describing the elements of the crimes to which Romo pled no contest, and the plea hearing transcript—demonstrates that Romo entered his no-contest pleas knowingly, intelligently, and voluntarily. Pursuit of this issue would lack arguable merit.

We also agree with appellate counsel that Romo could not mount an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that Romo's rehabilitation was the primary sentencing objective, and the circuit court explained the factors that it considered when fashioning the sentences. *See id.*, ¶¶40-43. The factors selected were proper and relevant. The sentences that the circuit court imposed and stayed were within the maximum allowed by law and cannot be considered unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. The five-year period of probation that the circuit court imposed was also within the statutory maximum. *See* WIS. STAT. § 973.09 (2)(b) (2013-14). Further discussion of this issue is unwarranted.

Our independent review of the record does not disclose any other potential issues for appeal. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Jorge R. Fragoso is relieved of any further representation of Antonio Romo. *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