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July 7, 2020

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

2019AP1768-CRNM State of Wisconsin v. Wilbert A. Vanegas-Espinoza
(L.C. # 2017CF5222)

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

Wilbert A. Vanegas-Espinoza appeals from a judgment of conviction for second-degree sexual assault of a child under sixteen. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Upon consideration of the report, Vanegas-Espinoza's response, and an independent review of the

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

record as mandated by *Anders*, the judgment is summarily affirmed because we conclude that there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The criminal complaint recites that a thirteen-year-old girl reported to school officials that before she came to school that day, Vanegas-Espinoza had sexual contact with her and put something inside her which was painful. The girl, her mother, and her seventeen-year-old sister were living with Vanegas-Espinoza at the time. Vanegas-Espinoza admitted to police that he probably rubbed the child's clitoral area about three times but he did not believe he penetrated her. Vanegas-Espinoza was charged with having sexual intercourse with the thirteen-year-old.

Vanegas-Espinoza entered a guilty plea pursuant to a plea agreement that called for the prosecution to recommend ten to twelve years of initial confinement and ten years of extended supervision. The prosecution also agreed not to issue additional charges against Vanegas-Espinoza related to his sexual contact with the victim's older sister and witness intimidation via Facebook messages. Vanegas-Espinoza was sentenced to fifteen years of initial confinement and five years of extended supervision.

The no-merit report addresses the potential issues of whether Vanegas-Espinoza's plea was knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an erroneous exercise of discretion or was unduly harsh or excessive. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit, and this court will not discuss them further.

In his response, Vanegas-Espinoza takes issue with the length of his sentence. He expresses his disagreement with the sentencing court's assessment that an aggravating

circumstance was Vanegas-Espinoza's control over the victim and her family by virtue of him being their sole source of housing after their arrival from El Salvador and his abuse of that power. Vanegas-Espinoza asserts he did not take advantage of the family when he allowed them to live with him and that all members of the family were free to do as they pleased. He further explains that his relationship with the victim's older sister was consensual and with parental approval. Finally, he explains that Facebook messages were not sent directly to the victim but only to the victim's mother and that his bond conditions did not preclude contact with the mother.

Vanegas-Espinoza's response does not present an arguably meritorious claim that he was sentenced on the basis of inaccurate information. The sentencing court was given the information that Vanegas-Espinoza recites in his response to the no-merit report, including the nature of the Facebook messages to the victim's mother pleading that the family not show up to court. The sentencing court simply had a different interpretation of that information than what Vanegas-Espinoza offers.

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 Vanegas-Espinoza further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jay R. Pucek is relieved from further representing Wilbert A. Vanegas-Espinoza 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