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**DISTRICT II**

August 26, 2020

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

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2019AP229-CRNM      State of Wisconsin v. Angelo Zamora (L.C. #2016CF1303)

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).**

Attorney Marcella De Peters, appointed counsel for Angelo Zamora, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and

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

*Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to the circuit court order denying Zamora's pretrial motions, or to Zamora's plea or sentencing. Zamora has filed a response, arguing that there is arguable merit to pursue issues set forth in a pro se postconviction motion Zamora filed in the circuit court. We directed counsel to address whether there would be arguable merit to a postconviction motion for plea withdrawal based on the arguments set forth in Zamora's pro se motion. Counsel has filed a supplemental no-merit report concluding that a motion for plea withdrawal would lack arguable merit. Upon independently reviewing the entire record, as well as the no-merit report, response, and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Zamora was charged with two counts of sexual assault of a child under sixteen years of age, two counts of incest, and one count of attempted sexual assault of a child under sixteen years of age, all as a persistent repeater. Pursuant to a plea agreement, Zamora pled guilty to one count of sexual assault of a child under sixteen years of age and one count of incest, both without the persistent repeater enhancer, the remaining counts were dismissed, and the State limited its sentencing recommendation to five years of initial confinement. The court sentenced Zamora to a total of ten years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to the circuit court order denying Zamora's pretrial motions to make more definite the times of the

alleged offenses or to depose the victims.<sup>2</sup> The no-merit report concludes that the circuit court properly exercised its discretion by denying Zamora's motions, and that any challenge to the circuit court's decision denying the motions would lack arguable merit. We agree that it would be wholly frivolous to challenge the circuit court's exercise of discretion in denying the pretrial motions. *See generally State v. Wurtz*, 141 Wis. 2d 795, 801, 416 N.W.2d 623 (Ct. App. 1987) (pretrial motions generally committed to circuit court's discretion). Moreover, a guilty plea generally waives all nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. Accordingly, Zamora's guilty plea waived any challenge to the court's decision denying Zamora's pretrial motions.

The no-merit report addresses whether there would be arguable merit to a challenge to Zamora's plea. A postsentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Zamora signed, satisfied the court's mandatory duties to personally address Zamora and determine information such as Zamora's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765

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<sup>2</sup> The no-merit report states the issue as whether Zamora could seek plea withdrawal based on the circuit court denying Zamora's pretrial motions. However, the no-merit report goes on to discuss whether there would be arguable merit to a challenge to the circuit court's order, without explaining why any error by the circuit court in denying the pretrial motions would support plea withdrawal. We discern no basis on which the court's pretrial rulings in this case would invalidate the subsequent plea.

N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Zamora's plea would lack arguable merit. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *Kelty*, 294 Wis. 2d 62, ¶18.

Zamora argues in his no-merit response that he is entitled to plea withdrawal for the reasons set forth in his pro se postconviction motion.<sup>3</sup> Zamora argued in that motion that his trial counsel was ineffective by failing to investigate and telling Zamora that he had no defense and had to plead guilty. Specifically, Zamora asserted that his trial counsel failed to interview six potential witnesses, and that two of those witnesses had contacted trial counsel and informed trial counsel that the victims had lied. The postconviction motion asserted that trial counsel told the witnesses that counsel was not going to fight the charges.

This court directed no-merit counsel to address whether any of the arguments in Zamora's postconviction motion had arguable merit. Counsel filed a supplemental no-merit report concluding that none of Zamora's contentions would support a nonfrivolous claim for plea withdrawal. No-merit counsel asserts that trial counsel stated that he spoke with one potential witness and found him not credible, and that trial counsel declined to interview further witnesses after the State and Zamora reached a plea agreement. No-merit counsel also states that she asked Zamora for contact information for all six witnesses that Zamora believed his trial counsel

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<sup>3</sup> Zamora filed the postconviction motion after his appointed counsel filed a no-merit notice of appeal. The circuit court did not take any action on the motion, which Zamora filed pro se while he was represented by counsel. *See State v. Redmond*, 203 Wis. 2d 13, 16-17, 19, 552 N.W.2d 115 (Ct. App. 1996) (no right to hybrid representation). We note that, while Zamora titled the motion as a WIS. STAT. § 974.06 motion, he filed the motion while his direct appeal rights under WIS. STAT. RULES 809.30 and 809.32 had not yet expired. *See* § 974.06(1) (providing that § 974.06 is available after time for direct has passed).

should have contacted. No-merit counsel explains that her attempts to contact the first potential witness were unsuccessful based on the contact information that Zamora provided as well as counsel's follow-up investigation. No-merit counsel states that she asked Zamora what the witness would have stated had counsel been able to contact her, and states that Zamora told her that the witness would have said that letters that the circuit court relied on at sentencing were fraudulent. However, as no-merit counsel points out, the State did not offer any letters at sentencing. No-merit counsel states that the second potential witness told her that she had no information to offer. No-merit counsel states that the third, fourth and fifth potential witnesses did not provide any information that would have supported a defense at trial. Rather, no-merit counsel explains, those potential witnesses indicated their belief that one of the victim's mothers was a liar and that the allegations were fabricated. The sixth potential witness was identified by Zamora as a girlfriend of one of the witnesses that no-merit counsel contacted, and the witness no-merit counsel contacted stated that his girlfriend would have nothing additional to add. We agree with the assessment set forth in the supplemental no-merit report that a postconviction motion for plea withdrawal based on trial counsel's failure to interview any of the six potential witnesses would lack arguable merit.<sup>4</sup>

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to Zamora's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record

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<sup>4</sup> To the extent that the postconviction motion made assertions not specifically addressed in this opinion, we have considered those assertions and conclude they would not support any issues of arguable merit.

for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Zamora’s character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶ 39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Zamora faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (citation omitted)). The court awarded Zamora 329 days of sentence credit, on counsel’s stipulation. We discern no other basis to challenge the sentence imposed by the circuit court.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further 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 Marcella De Peters is relieved of any further representation of Angelo Zamora in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*