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DISTRICT III

March 23, 2021

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

2020AP1888-CRNM State of Wisconsin v. Michael J. Torres (L. C. No. 2017CF20)

Before Stark, P.J., Hruz and Seidl, 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).

Michael J. Torres appeals from a judgment of conviction for first-degree sexual assault of a person under age thirteen. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ and *Anders v. California*, 386 U.S. 738 (1967). Torres has

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

filed a response to the no-merit report. *See* RULE 809.32(1)(e). Upon consideration of these submissions and an independent review of the record, as mandated by *Anders*, the judgment is summarily affirmed because we conclude there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Torres was charged with two counts of child enticement and with three counts of first-degree sexual assault of a child by sexual contact with a person under age thirteen. Torres entered a no-contest plea to one count of first-degree sexual assault, and the remaining charges were dismissed and read in for purposes of sentencing. Pursuant to the plea agreement, both sides were free to argue for an appropriate sentence.

After preparation of the presentence investigation report (PSI) but before sentencing, Torres discharged his trial counsel because he wanted to pursue a motion to withdraw his no-contest plea on the ground of ineffective assistance of counsel. Torres, by new trial counsel, moved to withdraw his no-contest plea. At the hearing on the motion, Torres testified he felt rushed, uncomfortable with the amount of time trial counsel had spent with him, and pressured to enter the no-contest plea. He indicated he had lost faith in his attorney's representation, and, believing he would not be appointed a new attorney,² he became severely depressed and entered the no-contest plea just to get the case over and because he felt he had no other options. Torres's former trial counsel did not testify at the hearing because Torres would not waive the attorney-client privilege.

² Torres testified that when his second attorney was appointed, he was told by the local state public defender's office to make sure that the attorney works out because a defendant is only allowed to have two attorneys appointed. Torres was represented by his second attorney when he entered his no-contest plea.

The circuit court denied Torres's motion for plea withdrawal. The court found that Torres's hearing testimony was contradicted by Torres's responses during the plea colloquy, at which time Torres assured the court that he had enough time to talk with his trial counsel about the case, that he was satisfied with trial counsel's representation, and that he was thinking clearly in entering his no-contest plea. The court also observed there was no corroboration of Torres's claim that when the second attorney was appointed to represent Torres, someone in the state public defender's office had informed Torres that he would not be afforded a third attorney if he discharged his second attorney. The court further found that Torres's desire to withdraw his plea was really motivated by a change of heart after learning that the PSI recommendation was for ten to twelve years' initial confinement. The court concluded that Torres had not shown a fair, just and credible reason for withdrawing his no-contest plea.

Torres was sentenced to ten years' initial confinement and six years' extended supervision. He was granted 832 days of sentence credit.

The no-merit report addresses the potential issues of whether Torres's plea was knowingly, voluntarily, and intelligently entered, whether the circuit court properly exercised its discretion in denying Torres's motion to withdraw his plea before sentencing, whether the sentence was the result of an erroneous exercise of discretion, and whether any new factor would support a motion for sentence modification. 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 to the no-merit report, Torres asserts that his no-contest plea was not voluntarily entered because of the actions of his trial counsel, who advised him to enter the plea

and undermined Torres's confidence in counsel's representation. The claim that Torres was improperly influenced by his trial counsel's actions was litigated in the motion for plea withdrawal. The circuit court found that Torres's complaints about his trial counsel and Torres's reasons for seeking plea withdrawal were not credible. When a circuit court's factual determinations are rooted in its assessment of the witnesses' credibility, we accept those determinations. *State v. Quarzenski*, 2007 WI App 212, ¶19, 305 Wis. 2d 525, 739 N.W.2d 844. Torres's response does not change our determination that there is no arguable merit to a claim that Torres's motion to withdraw his plea should have been granted.

Our review of the record discloses no other potential meritorious issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Torres further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that attorney Philip J. Brehm is relieved from further representation of Michael Torres 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