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June 22, 2021

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

2019AP1416-CRNM State of Wisconsin v. Manuel Gonzalez (L.C. # 2016CF2914)

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).

Manuel Gonzalez appeals a judgment convicting him after a jury trial of one count of child abuse, intentionally causing harm, two counts of obstructing an officer, and one count of disorderly conduct. Appointed appellate counsel, Jorge R. Fragoso, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*,

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

386 U.S. 738, 744 (1967). Gonzalez was notified that a no-merit report had been filed and was given an opportunity to respond, but he has not done so. After considering the no-merit report and conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that Gonzalez could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether Gonzalez was improperly denied the right to hire counsel of his own choosing. A defendant has the presumptive right to counsel of his or her choosing under the Sixth Amendment. *State v. Prineas*, 2009 WI App 28, ¶14, 316 Wis. 2d 414, 766 N.W.2d 206. However, that right has limits. *See id.* “When making a determination whether to allow the defendant’s counsel of choice to participate, the circuit court must balance that right against the public’s interest in the prompt and efficient administration of justice.” *Id.*, ¶13. “Several factors assist the court in balancing the relevant interests,” such as “the inconvenience to the parties, witnesses and the court,” “the length of delay requested,” and “whether the delay seems to be for legitimate reasons or whether its purpose is dilatory.” *Id.*

Gonzalez did not seek permission from the circuit court to hire his own counsel until five hours *after* the trial was scheduled to start. Gonzalez did not appear the morning of trial and, when he finally presented himself to the court later on the first day of trial, he asked the circuit court to delay the trial so he could secure counsel of his own choosing. The circuit court denied Gonzalez’s request because the witnesses were already present for trial, the court had set time aside for trial, the attorneys were ready to proceed, and Gonzalez had not asked for different counsel during prior hearings. Under these circumstances, there would be no arguable merit to a claim that Gonzalez was improperly denied permission to retain counsel of his own choosing.

The no-merit report also addresses whether there would be arguable merit to a claim that Gonzalez’s conviction for intentionally causing bodily harm to a child violated Gonzalez’s constitutional right to be free from double jeopardy. After Gonzalez’s conviction, he moved for postconviction relief because he received a municipal citation for battery from the City of West Allis based on the same underlying facts. Gonzalez’s counsel later withdrew the motion. Even though the postconviction motion was withdrawn, we address the issue in the context of this no-merit review.

The Double Jeopardy Clause protects a person against a subsequent prosecution for the same offense after conviction. *State v. Canon*, 2001 WI 11, ¶8, 241 Wis. 2d 164, 622 N.W.2d 270. To determine whether a municipal ordinance violation constitutes a conviction, we apply the intent-effects test. *See State v. Rachel*, 2002 WI 81, ¶38, 254 Wis. 2d 215, 647 N.W.2d 762. That test requires that courts consider “the intent of the legislature in creating the statute” and “whether the sanctions imposed ... are so punitive in form and effect as to render them criminal despite the legislature’s intent to the contrary.” *Id.*, ¶¶40, 42 (citations and internal quotation marks omitted). “Only with ‘the clearest proof’ will we find that what has been denominated a civil remedy is, in actuality, a criminal penalty.” *Id.*, ¶42 (citations omitted). The no-merit report points out that municipal ordinance violations have historically been considered civil violations, not criminal punishments. We agree with the no-merit report’s analysis of this issue and its conclusion that the issue is frivolous.

The no-merit report next addresses whether there was sufficient evidence to support the verdict on each count. When reviewing the sufficiency of the evidence, we look at whether “the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable

doubt.”” *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). Our review of the trial testimony and other evidence introduced at trial demonstrates that there is ample evidence to support the jury verdicts. Therefore, there would be no arguable merit to a claim that there was insufficient evidence to support the verdicts.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to Gonzalez’s sentences. The circuit court sentenced Gonzalez to thirteen months of initial confinement and thirty-six months of extended supervision for child abuse, intent to cause harm. The circuit court also sentenced Gonzalez to seven months in jail for obstructing an officer and eight months in jail for a second count of obstructing an officer, to be served consecutively, and ninety days in jail for disorderly conduct, to be served concurrently. The circuit court considered appropriate sentencing objectives and explained how the sentence it imposed was based on the various sentencing criteria as applied to the facts of this case. *See State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262. Because the circuit court properly exercised its sentencing discretion, there would be no arguable merit to an appellate challenge to the sentences.

The no-merit report next addresses whether the jury was properly selected and whether the jury was properly instructed. We agree with the no-merit report’s extensive analysis of these issues and its conclusion that they are meritless. Our independent review of the record reveals no other arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and we relieve counsel of further representing Gonzalez.

IT IS ORDERED that the judgment of the circuit court 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 Gonzalez. *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