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DISTRICT I

July 20, 2021

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge

John Barrett
Clerk of Circuit Court
Milwaukee County

Winn S. Collins
Electronic Notice

Samantha Rae Schmid
Electronic Notice

Christopher D. Sobic
Assistant State Public Defender
Electronic Notice

Marcos A. Mercado-Quijanto 628821
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2019AP2102-CRNM State of Wisconsin v. Marcos A. Mercado-Quijanto
(L.C. # 2019CF557)

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).

Marcos A. Mercado-Quijanto appeals the judgment convicting him of soliciting a child for prostitution. Assistant State Public Defender Christopher D. Sobic has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and *Anders v. California*, 386 U.S. 738 (1967).¹ Mercado-Quijanto received a copy of the report and filed two responses. Upon consideration of the no-merit report, Mercado-Quijanto's responses, and an independent review of the record as

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

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

The State filed a criminal complaint charging Mercado-Quijanto with one count of soliciting a child for prostitution between the dates of January 1, 2017, and February 22, 2018. The complaint alleged that following a sexual assault examination of the victim, swabs sent to the Wisconsin State Crime Lab resulted in a Combined DNA Index System hit for Mercado-Quijanto. When a detective showed the victim an array that included Mercado-Quijanto's photo, the victim did not identify him at first. The detective then asked if there was any reason that Mercado-Quijanto's DNA would have been found on her rape kit, and at that point, the victim identified Mercado-Quijanto by name and said that he sexually assaulted her. The victim said she did not initially identify him because Mercado-Quijanto's hair was shorter in the photo.

The complaint further alleged that the victim told the detective that as she walked away from a group home, Mercado-Quijanto pulled up in a car and asked her if she wanted to smoke. The victim said that Mercado-Quijanto drove her to an auto parts garage and told her that he worked there and also slept there because he was homeless. Mercado-Quijanto subsequently left the garage and returned with a pizza and marijuana for the victim to smoke. Afterward, Mercado-Quijanto asked the victim if she would have sex with him for money. The victim said no, at which point Mercado-Quijanto pinned her down and assaulted her. After the assault, Mercado-Quijanto offered to pay the victim again.

During an in-custody interview, Mercado-Quijanto told the detective that he was an auto mechanic working at a Milwaukee garage since 2012. He said that starting in 2017, he lived in the garage for a year and regularly had sex with females there. Mercado-Quijanto said that

sometimes he paid the females with money and sometimes with crack cocaine. When shown a photo of the victim, Mercado-Quijanto denied taking her to the garage or meeting her and did not know why his DNA would be linked to her.

Mercado-Quijanto's trial counsel requested a competency evaluation because on the day that Mercado-Quijanto was scheduled to enter a plea, he claimed he did not understand the proceedings. The circuit court ordered the evaluation and the examining psychiatrist concluded that Mercado-Quijanto was competent to stand trial. Mercado-Quijanto stipulated to the psychiatrist's competency determination.

Mercado-Quijanto ultimately pled no contest to the charge against him. Pursuant to the plea agreement, the State agreed to recommend a prison sentence with the length left to the circuit court's discretion. The circuit court accepted Mercado-Quijanto's no-contest plea and sentenced him to three years of initial confinement and three years of extended supervision.

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

This court will, however, briefly address the issue raised by Mercado-Quijanto in his responses. In his initial response, Mercado-Quijanto asserted that the circuit court did not account for his addiction and mental health issues during sentencing. In a subsequent response, Mercado-Quijanto asserted that because he was an addict he deserved to be in the early release program. We presume that Mercado-Quijanto intended to reference the earned release program,

which was renamed the Wisconsin Substance Abuse Program in 2011. *See* 2011 Wis. Act 38, § 19.

First, we note that the circuit court acknowledged during the combined plea and sentencing hearing that it was aware that Mercado-Quijanto was receiving treatment for mental illness. In addition, there were numerous references to Mercado-Quijanto's drug usage and crack cocaine addiction. The prosecutor explained that the State was agreeable to a no-contest plea because it knew that Mercado-Quijanto was using drugs when the offense occurred.

In any event, Mercado-Quijanto could not mount an arguably meritorious claim that the circuit court erred by denying him eligibility for the substance abuse program. Because he was convicted of violating WIS. STAT. § 948.08, he was statutorily ineligible for that program.² *See* WIS. STAT. § 302.05(3)(a)1. (providing that an inmate who is incarcerated for a violation of § 948.08 does not qualify for program eligibility).

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

Upon the foregoing, therefore,

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

² If Mercado-Quijanto was referring to the challenge incarceration program when he asserted that he deserved to be in the early release program, he was likewise statutorily ineligible for that program given that he was fifty-five years old at the time of his sentencing and based on the underlying crime for which he was convicted. *See* WIS. STAT. § 302.045(2)(b) & (c) (providing that an inmate who is forty or older on the date he or she starts the program or who is incarcerated for a violation of WIS. STAT. § 948.08 does not qualify for program eligibility).

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Mercado-Quijanto in this matter. *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