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DISTRICT I

February 8, 2022

To:

Hon. Carolina Stark
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
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Michelle L. Velasquez
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Jose Luis Discua-Bados 666773
Green Bay Correctional Inst.
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Green Bay, WI 54307-9033

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

2019AP1101-CRNM State of Wisconsin v. Jose Luis Discua-Bados (L.C. # 2012CF45)

Before Brash, C.J., Dugan and White, 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).

Jose Luis Discua-Bados appeals from a judgment convicting him of first-degree intentional homicide by use of a dangerous weapon. Appellate counsel, Michelle L. Velasquez, 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 Discua-Bados received a copy of the no-merit report and filed a response. Appellate counsel filed a supplemental no-merit report addressing the issues in

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

Discua-Bados's response. We have independently reviewed the record, the no-merit report, Discua-Bados's response, and the supplemental no-merit report, as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

The no-merit report provides a detailed recitation of the facts leading to the charge against Discua-Bados. On January 3, 2012, Milwaukee police responded to a domestic violence incident at the home of Dayana Bados, Discua-Bados's wife. When police arrived, they found Bados lying on her back, with multiple stab wounds to her upper back and neck, as well as severe wounds to her head. Bados was pronounced dead at the scene. Bados's grandmother told police that Discua-Bados first hit Bados with a wooden block and then stabbed her multiple times while she was face down on the ground.

Discua-Bados did not dispute that his actions caused Bados's death, but he maintained that he did not intend to kill his wife. The matter proceeded to trial, where the sole issue was intent. The jury found Discua-Bados guilty. The trial court sentenced Discua-Bados to the mandatory term of life imprisonment and declined to give him the possibility of release.

The no-merit report addresses three issues: (1) whether there was sufficient evidence to support the jury's verdict; (2) whether there are any arguably meritorious issues that would support a motion for a new trial; and (3) whether the trial court erroneously exercised its sentencing discretion. The no-merit report thoroughly addresses each of those issues, providing citations to the record, identifying the relevant law, and applying the law to the facts of this case. Based on our independent review of the record, we agree with counsel's assessment that none of those issues presents an issue of arguable merit.

In response to the no-merit report, Discua-Bados argues that he received ineffective assistance of counsel. Specifically, he contends that his trial counsel was ineffective for failing to raise a defense of not guilty by reason of mental disease or defect (NGI) and for failing to introduce testimony from his evaluating psychologist that he suffers from Post-Traumatic Stress Disorder (PTSD). We ordered counsel to respond to Discua-Bados's claims.

To prove a claim of ineffective assistance of counsel, a defendant must show that his lawyer performed deficiently and that this deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Id.* at 697.

Appellate counsel's supplemental no-merit report addresses each of the issues Discua-Bados identifies. The supplemental report discusses the relevant law, the lack of evidence supporting an NGI defense, and trial counsel's strategic reasons for not presenting testimony about Discua-Bados's PTSD. We agree with appellate counsel that the record does not support a contention that trial counsel rendered deficient performance.

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 Discua-Bados further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Michelle L. Velasquez is relieved from further representing Jose Luis Discua-Bados 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