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DISTRICT III

June 7, 2022

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

2020AP229-CRNM State of Wisconsin v. Rafael Ruiz, Jr. (L. C. No. 2014CF849)

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

Rafael Ruiz appeals from his convictions of two sexual assault charges. Attorney Erica Bauer has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).¹ The no-merit report sets forth the procedural history of the case and addresses a motion to dismiss, a suppression motion, Ruiz's pleas, and his sentences. Ruiz filed a response challenging his pleas, his trial counsel's performance, the suppression motion, and his

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

sentence credit—prompting Bauer to file a supplemental no-merit report further addressing those issues. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), in addition to the parties’ submissions, we conclude there are no arguably meritorious issues for appeal.

The State charged Ruiz with one count of repeated sexual assault of a child, two counts of sexual assault of a child under the age of sixteen, one count of child enticement, two counts of incest with a child by a stepparent, and one count of exposing intimate parts—each as a repeat offender and with all but the last count also subject to lifetime supervision of serious sex offenders. Ruiz filed a pro se motion, subsequently adopted by counsel, seeking to dismiss the charges for lack of jurisdiction on the theories that: (1) Ruiz, as a “natural living man,” could not be compelled to contract with the State of Wisconsin as a corporation or legal fiction; (2) Ruiz is immune from prosecution under 22 U.S.C. ch. 11 and the Eleventh Amendment of the United States Constitution because all public officers are foreign agents; (3) the State of Wisconsin is not a human being that can be cross-examined, thus denying Ruiz due process of law; and (4) the State of Wisconsin is not a person that can satisfy a federal requirement that a criminal case have an injured party. The circuit court denied the dismissal motion—explicitly discussing and rejecting Ruiz’s claims that all public officers are foreign agents; that the plaintiff in a criminal matter must be a human being; and that the alleged victims did not qualify as injured parties.

Ruiz also moved to suppress an incriminating statement he made to police while under the influence of pain medication for an injury he had suffered. Following a hearing, and after watching a video of Ruiz’s interrogation, the circuit court determined that Ruiz’s statement was voluntarily given and not a product of police coercion. The court made factual findings that,

while Ruiz was emotional during the interrogation, he was “completely” able to understand the questions asked of him and to provide appropriate responses after taking time to consider how to answer.

After the denial of his motions to dismiss the charges and to suppress his incriminating statement to police, Ruiz pled guilty to one count of repeated sexual assault of a child and one count of sexual assault of a child under the age of sixteen, each as a repeat offender and subject to lifetime supervision as a serious sex offender. In exchange, the State dismissed and read in the other five counts in this case, dismissed outright the charge in a separate misdemeanor case, and agreed to limit the initial confinement portion of its sentence recommendation to twelve years. The circuit court accepted Ruiz’s pleas after conducting a plea colloquy that included an acknowledgement by Ruiz that he had discussed and understood a plea questionnaire and waiver of rights form with counsel, although Ruiz had not signed the form. Ruiz moved to withdraw his pleas prior to sentencing, but he subsequently withdrew that motion..

The circuit court held a sentencing hearing at which the parties addressed any errors in the presentence investigation report (PSI) and an alternate PSI, discussed relevant facts and factors, and provided recommendations in accordance with the plea agreement. In addition, Ruiz presented testimony from the alternate PSI author and from a forensic psychologist regarding Ruiz’s character, mental health diagnoses, and recidivism risk. Ruiz also exercised his individual right of allocution. After hearing from the parties, the court discussed proper sentencing factors, including the gravity of the offenses and the character of the offender, and related those factors to proper sentencing objectives, giving emphasis to the need to protect the public and Ruiz’s rehabilitative needs for anger management and sex offender treatment. The court then sentenced Ruiz to concurrent terms of fifteen years’ initial confinement followed by

twelve years' extended supervision on each count, with lifetime supervision as a serious sex offender.

We agree with counsel's description, analysis, and conclusion that any challenges to the motion to dismiss, the suppression motion, the pleas, the sentences and sentence credit, or trial counsel's performance would lack arguable merit. In particular, we conclude: (1) Ruiz's jurisdictional challenges to the complaint were based upon inapplicable provisions of state and federal law that were taken out of context; (2) Ruiz was properly charged with and convicted of violations of both WIS. STAT. §§ 948.025 and 948.02 because the charges involved two different victims; (3) the circuit court's factual findings regarding Ruiz's statement to police were based upon evidence and were not clearly erroneous, and supported the ultimate conclusion that Ruiz's statement was voluntary; (4) the court properly relied upon Ruiz's assertion that he had reviewed the plea questionnaire and waiver of rights form and he understood the constitutional rights he was waiving, and Ruiz did not identify any actual misunderstanding he had about his constitutional rights; (5) the court properly exercised its sentencing discretion based upon accurate information; (6) the sentences imposed were within the applicable sentencing ranges and not unduly harsh; (7) Ruiz received proper sentence credit; and (8) trial counsel did not provide ineffective assistance by providing Ruiz with an assessment of his chances at trial and advising Ruiz to take the plea deal, or by failing to file any specific motions.

Our independent review of the record discloses no other potential issues for appeal.² We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Erica Bauer is relieved of any further representation of Rafael Ruiz in this matter pursuant to 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

² We note that Ruiz's pleas forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.