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DISTRICT I

September 27, 2022

To:

Hon. David C. Swanson
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Winn S. Collins
Electronic Notice

Jill Marie Skwor
Electronic Notice

John D. Flynn
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Gualbert Junior Portillo 632970
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2020AP2086-CRNM State of Wisconsin v. Gualbert Junior Portillo
(L.C. # 2018CF3791)

Before Brash, C.J., Donald, P.J., and White, J.

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).

Gualbert Junior Portillo appeals the judgment entered after he pled guilty to possessing a firearm as a felon, three drug-related offenses, disarming a peace officer, and second-degree recklessly endangering safety. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and *Anders v. California*, 386 U.S. 738 (1967).¹ Portillo was

¹ The no-merit report was filed by Attorney Nancy A. Dominski. On July 5, 2022, Attorney Jill Marie Skwor was substituted as counsel for Portillo and now represents Portillo in this appeal.

advised of his right to file a response and has elected not to do so. Upon consideration of the report and an independent review of the record, 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.

Portillo was charged with nine crimes: count one, possessing a firearm as felon; count two, possession with intent to deliver narcotics, second or subsequent offense; count three, possession of tetrahydrocannabinols; count four, carrying a concealed weapon; count five, possession with intent to deliver heroin, second or subsequent offense; count six, possession with intent to deliver cocaine; count seven, attempting to flee or elude an officer; count eight, disarming a peace officer; and count nine, second-degree recklessly endangering safety. Pursuant to a plea agreement, Portillo pled guilty to counts one, two, five, six, eight, and nine. In exchange, the State agreed to recommend that Portillo be sentenced to six years of initial confinement and three years of extended supervision, to move to dismiss counts three and four outright, to move to dismiss and read in count seven, and to dismiss the penalty enhancers that applied to counts two and five. The circuit court accepted Portillo's pleas and granted the State's dismissal motions.

The circuit court ordered Portillo to serve concurrent sentences resulting in an aggregate nine-year sentence consisting of six years of initial confinement followed by three years of extended supervision. The circuit court further ordered that the sentences in this case would run consecutively to any other sentence Portillo was serving. The circuit court found Portillo eligible for both the challenge incarceration program and the Wisconsin substance abuse program following four years of initial confinement. This no-merit appeal follows.

The no-merit report primarily focuses on whether the circuit court erred during sentencing. Portillo was sentenced in this case on December 11, 2018. The circuit court ordered that the sentences on all of the counts to which Portillo pled guilty to be served concurrently to each another but consecutive to any other sentence.

The no-merit report notes that on March 27, 2019, Portillo was sentenced on a revocation proceeding in Kenosha County Case No. 2014CF1208. The no-merit report considers whether it was improper for the circuit court in this case to order that the sentences run consecutively. As successor appellate counsel explains, WIS. STAT. § 973.15(2) authorizes a circuit court to impose a sentence “consecutive to any other sentence imposed at the same time or previously.” This statute permits a sentencing court to impose a sentence consecutive to a sentence in an earlier case in which probation has not yet been revoked. *See State v. Thompson*, 208 Wis. 2d 253, 255-56, 559 N.W.2d 917 (Ct. App. 1997). Such was the situation here. There would be no arguable merit to challenging Portillo’s sentence on this or any other basis.

Additionally, we have considered the potential issue of whether Portillo’s pleas were knowingly, voluntarily, and intelligently entered. The plea colloquy, when augmented by the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instructions, demonstrates Portillo’s understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416

N.W.2d 627 (Ct. App. 1987).² This court is satisfied that there would be no arguable merit to challenging the validity of Portillo's pleas.

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 Portillo further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jill Marie Skwor is relieved from any further representation of Gualbert Junior Portillo 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

² The plea questionnaire and waiver of rights form indicates that the maximum penalty Portillo faced was seventy-one years of incarceration and/or \$205,000 in fines. While the amount of incarceration was properly specified, in actuality Portillo faced \$210,000 in fines. The circuit court properly stated the maximum penalties during the plea colloquy. Moreover, the circuit court did not impose any fines in this matter. There would be no arguable merit to pursuing the misstatement.