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DISTRICT I

November 22, 2022

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
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Winn S. Collins
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Pamela Moorshead
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Rodolfo Pantojas-Juarez 679152
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

2021AP143-CRNM State of Wisconsin v. Rodolfo Pantojas-Juarez
(L.C. # 2017CF5143)

Before Donald, P.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).

Rodolfo Pantojas-Juarez appeals from a judgment, entered on his guilty pleas, convicting him on two counts of armed burglary as party to a crime and one count of felony murder. Appellate counsel, Pamela Moorshead, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).[1] Pantojas-Juarez was advised of his right to file a response, but he has not responded. Upon this court's independent

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

review of the record, as mandated by ***Anders***, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

Pantojas-Juarez and two other individuals were charged in a multi-count complaint covering a "series of home invasions, kidnappings, torture, shootings and one homicide" that occurred in October 2017. Pantojas-Juarez was originally charged with armed burglary as party to a crime, and two counts of first-degree recklessly endangering safety with the use of a dangerous weapon as party to a crime, and felony murder with armed robbery as the predicate offense. An information repeated these charges. When the case failed to resolve short of a trial, the State filed an amended information that charged Pantojas-Juarez with two counts of armed robbery as party to a crime; two counts of armed burglary as party to a crime; armed carjacking as party to a crime; attempted kidnapping as party to a crime; first-degree recklessly endangering safety with the use of a dangerous weapon as party to a crime; felony murder; and attempted first-degree intentional homicide as party to a crime.

Shortly after the amended information was filed, Pantojas-Juarez and the State reached an agreement. Pantojas-Juarez agreed to enter guilty pleas to three charges based on the original complaint: armed burglary as party to a crime; felony murder; and a second count of armed burglary as party to a crime, amended from the original first-degree recklessly endangering safety charge. The amended information was withdrawn, and a second amended information reflecting the plea agreement charges was filed. Under the agreement, the remaining first-degree recklessly endangering safety charge from the original complaint would be dismissed and read in. The State also agreed that offenses described but not charged in the complaint, and/or contained in the first amended information, would be treated as read-in offenses. The State

would also agree to limit its total sentence recommendation to thirty years of initial confinement. The circuit court conducted a colloquy and accepted Pantojas-Juarez's guilty pleas, and later imposed concurrent sentences totaling twenty-five years of initial confinement and fifteen years of extended supervision. Pantojas-Juarez appeals.

The first potential issue counsel discusses is whether Pantojas-Juarez should be allowed to withdraw his pleas, either because they were not knowing, intelligent, and voluntary, or because they lacked a factual basis. Our review of the record—including the plea questionnaire and waiver of rights form and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.[2] The record also reflects that the circuit court appropriately ascertained the existence of a factual basis for the plea. In addition to relying on the complaint, the circuit court asked Pantojas-Juarez and his attorneys to identify what facts they believed constituted the factual basis for each offense. Accordingly, there is no arguable merit to a claim for plea withdrawal based on claims that Pantojas-Juarez's pleas were not knowing, intelligent, and voluntary or lacked a factual basis.

[2] We note that the circuit court did not expressly review the elements of the offenses with Pantojas-Juarez; however, it did take other steps to establish his understanding of the nature of the crimes. *See* WIS. STAT. § 971.08(1)(a); ***State v. Bangert***, 131 Wis. 2d 246, 268, 389 N.W.2d 12 (1986). It specifically noted that Pantojas-Juarez's attorneys had included the jury instructions for burglary, burglary while armed, party to a crime, felony murder, and armed robbery with the plea questionnaire. It told Pantojas-Juarez that the instructions "contain the elements that the [S]tate would need to be able to prove in order to convict you" and asked if he understood that. He responded, "Yes, Your Honor." The circuit court continued, noting the elements are "incredibly important" and asking Pantojas-Juarez if he had an opportunity to discuss them with his attorneys and whether he understood them. Pantojas-Juarez answered yes to both questions. The circuit court also asked if he had any questions about the elements, and Pantojas-Juarez answered no.

The other issue counsel discusses is whether this court should remand the case for resentencing because the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider a variety of additional factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***id.***

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The fifty-year sentence imposed is well within the eighty-five-year range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguable merit to a challenge to the circuit court court's sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.[3]

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of further representation of Pantojas-Juarez 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

[3] The no-merit notice of appeal indicates that the appeal was taken from the corrected judgment entered March 27, 2019, but there was also a later amended judgment entered on July 19, 2019, after a restitution hearing, that includes restitution awards to one of Pantojas-Juarez's victims and the Crime Victim Compensation Fund. To the extent that the notice of appeal may have identified the incorrect document from which to appeal, no arguably meritorious issue exists. *See* ***Carrington v. St. Paul Fire & Marine Ins. Co.***, 169 Wis. 2d 211, 217 n.2, 485 N.W.2d 267 (1992); ***Rhyner v. Sauk Cnty.***, 118 Wis. 2d 324, 326, 348 N.W.2d 588 (Ct. App. 1984).

We note that the transcript of the restitution hearing is not in the record, nor is there any mention of the restitution amount in the no-merit report. However, the sentencing transcript reflects that Pantojas-Juarez's attorneys had received the restitution documentation, but they requested a hearing because they had not had the opportunity to review it with him. Electronic circuit court docket entries for the subsequent July 19, 2019 hearing indicate that the parties stipulated to the restitution amount, and the amount awarded matches the documentation in the record. Accordingly, there is no arguably meritorious issue relating to restitution.