



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 8, 2023

To:

Hon. Phillip A. Koss
Circuit Court Judge
Electronic Notice

Winn S. Collins
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Damian Castaneda Bernal, #701007
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

Gregory Bates
Electronic Notice

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

2022AP193-CRNM State of Wisconsin v. Damian Castaneda Bernal
(L.C. #2020CF484)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Damian Castaneda Bernal appeals a judgment of conviction entered after he pled guilty to one count of first-degree sexual assault of a child under the age of thirteen, one count of attempted sexual assault of a child under the age of sixteen, and two counts of repeated sexual assault of the same child. His appellate counsel, Gregory Bates, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).¹ Bernal

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

was advised of his right to file a response and has responded. Upon consideration of the no-merit report, the response, and an independent review of the record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

On September 30, 2020, the State charged Bernal with six crimes: two counts of first-degree sexual assault of a child under the age of thirteen, two counts of incest, one count of attempted sexual assault of a child under the age of sixteen, and one count of attempted incest. An information later added two counts of repeated sexual assault of a child. The charges stemmed from Bernal's assaults of four different children.

Pursuant to a plea agreement, Bernal pled guilty to one count of first-degree sexual assault of a child under the age of thirteen, one count of attempted sexual assault of a child under the age of sixteen, and two counts of repeated first-degree sexual assault of the same child. The parties jointly recommended a sentence totaling fifteen years of incarceration followed by fifteen years of extended supervision.² The circuit court accepted Bernal's pleas after conducting a colloquy with the assistance of an interpreter. The circuit court also confirmed that Bernal understood the plea questionnaire/waiver of rights form—which was provided in both English and Spanish—and that counsel reviewed the forms with Bernal. Counsel told the circuit court that she reviewed the appropriate forms and certain discovery with Bernal with the assistance of an interpreter. The circuit court sentenced Bernal to a total imprisonment term of forty years, bifurcated as twenty years of initial confinement and twenty years of extended supervision. The

² Defense counsel noted, however, that Bernal will be deported at the end of his prison sentence, calling extended supervision “a bit of a moot point.”

circuit court ordered the sentence for attempted sexual assault to run concurrent to the other counts, thus effectively adopting the parties' sentencing recommendation.

The no-merit report first addresses whether Bernal's guilty pleas were knowing, intelligent, and voluntary. We agree with counsel's analysis and conclusion that any challenge to the plea colloquy would lack arguable merit. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The circuit court, with the assistance of an interpreter, conducted a colloquy to ascertain that Bernal understood the nature of the charges, the penalties he faced, and the constitutional rights he would be waiving by entering his pleas. *See State v. Pegeese*, 2019 WI 60, ¶¶36-37, 387 Wis. 2d 119, 928 N.W.2d 590; *see also Bangert*, 131 Wis. 2d at 266-72, Wis. STAT. § 971.08. The plea hearing transcript and a translated plea questionnaire/waiver of rights form demonstrate that the court and counsel took the appropriate steps to ensure that Bernal's guilty pleas were knowing, intelligent, and voluntary. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

The no-merit report next addresses whether any "pretrial issues ... were preserved despite the entry of the guilty plea." We agree with counsel's analysis and conclusion as to this issue. Guilty pleas waive all non-jurisdictional issues except motions to suppress. *See State v. Popp*, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471. No motions to suppress were filed in this case.

With regard to the circuit court's sentencing decision, our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors, focusing particularly on the seriousness of the offenses and their impact on the victims. *See State v Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006

WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentences were within the maximum authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and were 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). Therefore, there would be no arguable merit to a challenge to the circuit court's sentencing discretion.

Turning to Bernal's response, we note that most of the issues Bernal raised are either irrelevant to the proceedings or unsupported by the record. This court can discern one contention Bernal makes that has some connection to counsel's no-merit report. That is Bernal's claim that he did not understand the plea proceedings and that the interpreter answered the circuit court's questions without Bernal's understanding. This contention is unsupported by the record. The circuit court ascertained Bernal's understanding of the proceedings multiple times. Bernal's claim that the interpreter answered questions on his behalf without consulting him is wholly implausible as Bernal's lack of participation would have been obvious to the judge and/or the other officers of the court. In addition, counsel informed the circuit court that she reviewed the plea questionnaire/waiver of rights form, the relevant jury instructions, and certain discovery with Bernal with the assistance of an interpreter and that Bernal was vocal when he did not understand something. The relevant forms were also provided to Bernal in both English and Spanish. In short, the record does not support what this court perceives to be Bernal's contention that he did not understand the plea proceedings.

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

Upon the foregoing therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of Damian Castaneda Bernal 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