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DISTRICT II

February 22, 2023

To:

Hon. Robert S. Repischak
Circuit Court Judge
Electronic Notice

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Winn S. Collins
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Patricia J. Hanson
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John P. Mueller
Electronic Notice

Victor A. Guajardo, #595649
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2021AP202-CRNM State of Wisconsin v. Victor A. Guajardo (L.C. #2017CF458)

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

Victor A. Guajardo appeals from a judgment convicting him of armed robbery as a party to a crime. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Guajardo received a copy of the report, was 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

¹ All references to the Wisconsin Statutes are to the 2021-2022 version.

judgment may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

Guajardo, while armed with a machete, and his brother, while armed with a gun, entered a Little Caesars restaurant. Guajardo's brother shot at an employee and beat him with the butt of his gun when the employee could not open the restaurant's safe. Guajardo and his brother then had employees open the restaurant's cash registers. Guajardo's brother took all the money from the registers, and Guajardo and his brother ran away.

In exchange for Guajardo's plea to armed robbery as a party to a crime, the State agreed to dismiss and read in two counts of first degree recklessly endangering safety as a party to a crime, one count of substantial battery as a party to a crime, and one count of misdemeanor battery as a party to a crime. All of these counts included the habitual-criminality and use-of-a-dangerous-weapon enhancers. The State agreed to recommend ten years' initial confinement and ten years' extended supervision. The court accepted Guajardo's plea, found him guilty, and sentenced him to ten years' initial confinement and ten years' extended supervision. This no-merit appeal follows.

The no-merit report addresses potential issues of whether Guajardo's plea was knowingly, intelligently, and voluntarily entered and whether the circuit court properly exercised its discretion at sentencing. This court is satisfied that the no-merit report properly analyzes the issues it raises as without arguable merit, and this court will not discuss them further.

Our independent review of the record prompts us to address one other matter that the no-merit report does not discuss in depth. Prior to Guajardo's plea, the State moved to determine the pretrial admissibility of statements Guajardo made to police. To be admissible, the State

needed to show by a preponderance of the evidence that Guajardo received and understood his *Miranda*² warnings before knowingly and intelligently waiving these rights and that his statements were given voluntarily. See *State v. Jiles*, 2003 WI 66, ¶26, 262 Wis. 2d 457, 663 N.W.2d 798. In this case, Guajardo never independently moved to suppress the statements, but put the State to its burden of proof. At the hearing, the State called a detective who testified and then played for the court a video from Guajardo’s interrogation. The court found that Guajardo was in custody, police gave him his *Miranda* warnings at the beginning of the interview, he waived his *Miranda* rights, and the circumstances were such that his subsequent statements were voluntary. The court determined Guajardo’s statements would be admissible at trial. Assuming Guajardo, as the non-movant, would be able to challenge the court’s grant of the State’s pretrial admissibility motion after his guilty plea, see WIS. STAT. § 971.31(10), the court’s determination that Guajardo’s statements were knowingly, intelligently, and voluntarily made is not clearly erroneous, and the circuit court appropriately applied the legal standards for admissibility. See *Jiles*, 262 Wis. 2d 457, ¶26. There is no arguable merit to challenging the circuit court’s grant of the State’s pretrial motion.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel from the obligation to represent Guajardo further in this appeal.

Upon the foregoing reasons,

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

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 John P. Mueller is relieved of further representation of Victor A. Guajardo 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