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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

March 29, 2023

To:

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Zeke Wiedenfeld
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Vicki Zick
Electronic Notice

Miguel A. Mora, #615289
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2021AP206-CRNM State of Wisconsin v. Miguel A. Mora (L.C. #2018CF19)
2021AP207-CRNM State of Wisconsin v. Miguel A. Mora (L.C. #2018CF349)

Before Gundrum, P.J., Grogan 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).

Miguel A. Mora appeals from two judgments convicting him of multiple crimes. 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). Mora received a copy of the report, was advised of his right to file a response, and has responded.[2] Upon consideration of the report, Mora's

[1] All references to the Wisconsin Statutes are to the 2021-22 version.

[2] Mora's response indicates it was drafted with the assistance of his appellate counsel.

response, and an independent review of the record, we conclude that the judgments may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

Mora and his girlfriend Ashley[3] got into an argument about her cell phone. Mora threw the phone, shoved Ashley against a wall, choked her, threw her to the ground, slapped her, and threatened to kill her. Ashley's young children witnessed the altercation, and police officers observed injuries on Ashley. In Walworth County Circuit Court case No. 2018CF19, the State charged Mora with strangulation and suffocation, misdemeanor battery, disorderly conduct, and two counts of misdemeanor bail jumping—all as a repeater.

While out on bond in the above case, Mora broke into Ashley's home around 1:00 a.m. Ashley was in bed with her eight-year-old daughter. When Ashley tried to call 911, Mora threw her cell phone, pinned Ashley to the floor, told her he would kill her, threatened her with a screwdriver, punched her, and slapped her. The next morning, Ashley dropped Mora off at the library and then reported Mora's actions to police. Ashley's daughter disclosed Mora came into the residence to hurt Ashley, told Ashley to open her legs, and Ashley said no. When police re-interviewed Ashley, she told police Mora pulled down her shorts and underwear. Ashley pleaded with him to stop and he eventually did.

[3] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym when referring to the victim in this case.

Police found Mora later that morning. When two officers attempted to arrest him, Mora fought them, wrestled them to the ground, and tried to grab a holstered service weapon. Once Mora was arrested, police found a small amount of THC on his person.

In Walworth County Circuit Court case No. 2018CF349, the State charged Mora with burglary while armed with a dangerous weapon, false imprisonment with use of a dangerous weapon, attempted first-degree sexual assault, felony intimidation of a victim with use of a dangerous weapon, misdemeanor battery with use of a dangerous weapon, two counts of felony bail jumping, one count of misdemeanor bail jumping, battery to a law enforcement officer, resisting an officer causing injury, attempting to disarm a peace officer, and possession of THC, all as a repeater.

In exchange for Mora's pleas to strangulation and suffocation, burglary while armed with a dangerous weapon, false imprisonment with use of a dangerous weapon, intimidation of a victim with use of a dangerous weapon, one count of felony bail jumping, battery to a law enforcement officer, and resisting an officer causing injury, all as a repeater, the State agreed to dismiss and read in all remaining charges as well as dismiss and read in charges from a third case.[4] The parties were free to argue for an appropriate sentence. The circuit court accepted

[4] In Walworth County Circuit Court case No. 2017CM327, the State charged Mora with two counts of resisting or obstructing an officer and one count of disorderly conduct, all as a repeater.

Mora's pleas, found him guilty, and sentenced him. Mora received a cumulative sentence of 15 years' initial confinement and 10 years' extended supervision. [5]

The no-merit report addresses potential issues of whether Mora's pleas were knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised its discretion at sentencing.

We agree with counsel's analysis and conclusion that any challenge to the validity of Mora's pleas would lack arguable merit. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Mora's pleas, pursuant to WIS. STAT. § 971.08, ***Bangert***, 131 Wis. 2d at 261-62, and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

With regard to the circuit court's sentencing discretion, our review of the record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; and ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622

[5] In case No. 2018CF19, the circuit court sentenced Mora to three years' initial confinement and three years' extended supervision on the strangulation and suffocation count. In case No. 2018CF349, the court sentenced him to ten years' initial confinement and five years' extended supervision on the burglary count, consecutive to the sentenced imposed in No. 2018CF19. Concurrent to the burglary sentence, the court sentenced Mora to four years' initial confinement and three years' extended supervision on the false imprisonment, intimidation of a victim, and felony bail jumping counts. The court then sentenced Mora to two years' initial confinement and two years' extended supervision each on the battery to law enforcement and the resisting an officer counts, consecutive to all other charges, but concurrent to each other.

N.W.2d 449. The sentence was 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 court's sentencing discretion.

In Mora's response, he argues there are issues of arguable merit as to whether he received ineffective assistance of trial counsel on the grounds that his pleas were not knowingly, voluntarily, and intelligently entered. He asserts he was not competent to plead based on learning and mental health issues, did not understand what "dismissed but read in" meant, was distressed to learn that the attempted sexual assault charge was not removed from CCAP, trial counsel did not interview Ashley about the attempted sexual assault, and he never reviewed discovery before pleading.

"To withdraw a guilty plea after sentencing, a defendant must show by clear and convincing evidence that a refusal to allow withdrawal of the plea would result in manifest injustice." *See* ***State v. Dillard***, 2014 WI 123, ¶83, 358 Wis. 2d 543, 859 N.W.2d 44. "One way to demonstrate manifest injustice is to establish that the defendant received ineffective assistance of counsel." ***Id.***, ¶84. To prove ineffective assistance of counsel, Mora must show that his trial counsel's performance was deficient, and that the deficient performance prejudiced Mora. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

Mora argues his learning and mental health issues interfered with his ability to plead in this case and his trial counsel was ineffective for ignoring these "competency" issues. Mora states he asked his trial counsel to investigate his competency and she stated in an email, "I don't think we need an IQ test in this case. Competency isn't an issue as far as I can tell." He contends

competency was an issue because he did not know what "dismissed but read in" meant and he did not know the attempted sexual assault charge "would be on my CCAP record forever."

However, at the plea hearing, Mora advised the court that he had eleven years of schooling and, through counsel, indicated he was taking his final test for his GED in just over a month through the jail. The court engaged Mora and questioned Mora regarding his mental health disorders (bipolar, ADHD, and depression) and the medication he was taking. The court confirmed that Mora was able to understand everything and his medication did not prevent him from understanding the proceedings. The court also explained:

> There are some read-in charges. What a read in means is that the maximum penalty is not increased. The state can never issue those charges again. So those are the benefits to you. The detriment is restitution could be ordered on them, that you pay for the damages caused, and that the court can consider those as potential aggravating factors at sentencing. Do you understand that?

Mora indicated he understood. At the end of the court's colloquy, before taking Mora's pleas, the court inquired, in part, whether Mora had "any questions as we've gone along of anything I've confused you about or that you don't understand." Mora responded, "No, your honor."

There is no arguable merit to a claim that counsel was ineffective because Mora's learning and mental health issues interfered with his plea and prevented him from understanding what dismissed but read in means. The court engaged Mora in an extensive colloquy. Mora was one test away from his GED, he indicated his medication did not interfere with his ability to understand what was occurring, he had no questions for the court, and, per counsel's email, she had no reason to question his competency. The record also reveals that the court explicitly advised Mora the effect of a charge that was dismissed but read in.

Further, Mora's incorrect assumption that his attempted sexual assault charge would be removed from the public CCAP website after he pled does not go to whether his pleas were knowingly, intelligently, and voluntarily entered. What is displayed on the public CCAP website is, at best, a collateral consequence of his pleas. *See* ***State v. Kosina***, 226 Wis. 2d 482, 486, 595 N.W.2d 464 (Ct. App. 1999) (A collateral consequence is one that does not automatically flow from the plea.). There is no merit to a claim of ineffective assistance of counsel on the basis that the dismissed but read in attempted sexual assault charge was not removed from the CCAP website. *See* ***id.*** at 485 ("No manifest injustice occurs, however, when the defendant is not informed of a collateral consequence.").[6] Further, we observe that according to the CCAP website, Mora's attempted sexual assault charge is listed as dismissed but read in, which is entirely consistent with his plea agreement and the judgment of conviction.

Mora next argues there is an issue of arguable merit as to whether his trial counsel was ineffective because his "trial attorneys … did not share discovery with me, and refused to interview [Ashley]." Mora acknowledges the court put a protective order in place prohibiting Mora from possessing a copy of certain discovery materials but counsel was permitted to review the discovery with Mora. According to Mora, the file contained photos of the interior and exterior of the victim's house, photos of injuries to the police officers, photos of the victim's injuries, recordings of the victim's statement to police and the forensic interview of the victim's daughter. Mora asserts his trial attorneys failed to review the discovery with him before the plea

[6] We observe that, at the plea hearing, the court inquired whether "[o]utside of these plea negotiations, has anyone, even including your attorney, made any promises to get you to plead guilty?" Mora stated, "No, your honor."

hearing. Mora also states when he asked his attorneys to interview Ashley to gauge her credibility, they refused because "it would do more harm than good."

However, Mora was aware of both of these perceived discovery deficiencies at the time he agreed to enter a plea and yet he still chose to plead to the agreed-upon charges. *See* ***Bangert***, 131 Wis. 2d at 293 (a plea of guilt or no contest constitutes a waiver of non-jurisdictional defects and defenses). At the plea hearing, he told the court that he was satisfied with how his attorney handled his cases. He also advised the court his trial counsel discussed possible defenses, mitigating circumstances, or things that could help him in this case.

Further, even assuming trial counsel was deficient in regard to these pre-plea discovery matters, to prove ineffective assistance of counsel, Mora must show both that his trial counsel's performance was deficient and the deficient performance prejudiced Mora. *See* ***Strickland***, 466 U.S. at 687. Mora does not allege that he would not have pled had trial counsel reviewed the discovery file with him prior to his pleas. He does not identify anything exculpatory from the file. Although he suggests that had counsel interviewed Ashley, counsel might have found her to be incredible, this assertion is speculative and does not establish prejudice.[7] There is no arguable merit to a claim that Mora's trial counsel was ineffective for failing to review discovery with Mora prior to his pleas or for refusing to interview Ashley to gauge her credibility.

[7] We also observe that counsel's decision not to interview Ashley—based on counsel's position that "it would do more harm than good"—was a strategic or tactical decision that was "based upon rationality founded on the facts and the law." *See* ***State v. Felton***, 110 Wis. 2d 485, 502, 329 N.W.2d 161 (1983). This does not constitute ineffective assistance of counsel. *See* ***id.*** ("If tactical or strategic decisions are made [rationality founded on the facts and the law], this court will not find that those decisions constitute ineffective assistance of counsel.").

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of further representation of Miguel A. Mora 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