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DISTRICT II

November 8, 2023

To:

Hon. Laura F. Lau
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Christopher D. Sobic
Electronic Notice

Simona L. Ramirez
6005 S. 20th St.
Milwaukee, WI 53221

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

2023AP222-CRNM State of Wisconsin v. Simona L. Ramirez (L.C. #2019CF840)

Before Neubauer, 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).

Simona L. Ramirez appeals her judgment of conviction in which the circuit court ordered that she pay restitution in the amount of \$14,846. Her appellate counsel, attorney Christopher D. Sobic, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2021-22).¹ Ramirez received a copy of the report and was advised of her right to file a response, but she did not do so. Upon this court's independent review of the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

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.

Ramirez was charged in June 2019 with first-degree reckless homicide as a party to a crime in the death of A.R., who died after Ramirez provided him with oxycodone pills that contained fentanyl. Ramirez's source for the drugs, Kenyon Q. Pugh, was also charged.

Ramirez chose to resolve the charge with a plea. Pursuant to the plea agreement, she pled no contest to a charge of delivery of a schedule II narcotic in exchange for her cooperation in the State's prosecution of Pugh. The circuit court withheld sentence, placing Ramirez on probation for ten years, with a term of twelve months in jail as a condition of her probation.

The circuit court also ordered restitution in this matter. At the restitution hearing held in October 2021, Ramirez stipulated to restitution for funeral expenses in the amount of \$7,432. However, she contested the amount proposed for lost wages, \$7,414, arguing that this amount could not be specifically calculated based on the tax returns provided by A.R.'s wife. The circuit court rejected that argument and awarded the amount of lost wages proposed by the State, for a total award of \$14,846, to be paid jointly and severally with Pugh. This no-merit appeal follows.

In the no-merit report, appellate counsel asserts that the only issue before this court is whether there would be arguable merit to a claim challenging the circuit court's award of restitution.² Counsel further asserts that such a claim would lack arguable merit because the Record shows that the circuit court properly exercised its discretion by awarding restitution for

² Appellate counsel notes that a notice of intent to pursue postconviction relief was not filed within twenty days of sentencing, in accordance with the statutory timeframe. *See* WIS. STAT. § 809.30(2)(b). Rather, a notice of intent was filed after the restitution hearing.

both funeral expenses and the lost wages. See *State v. Fernandez*, 2009 WI 29, ¶20, 316 Wis. 2d 598, 764 N.W.2d 509 (“Reviewing the calculation of restitution involves a question of whether the [circuit] court misused its discretionary authority,” and this court may reverse that determination only if the circuit court “applied the wrong legal standard or did not ground its decision on a logical interpretation of the facts.”).

As noted above, Ramirez stipulated to the portion of the restitution award for A.R.’s funeral expenses. Restitution for funeral costs is specifically contemplated in WIS. STAT. § 973.20, the restitution statute. See § 973.20(4). Additionally, the restitution statute allows for the award of special damages sustained by a victim, when there is evidence in the Record to substantiate the claim. See § 973.20(5)(a). “Lost wages are a type of special damages.” *State v. Muth*, 2020 WI 65, ¶50, 392 Wis. 2d 578, 945 N.W.2d 645.

Ramirez’s argument during the restitution hearing against the amount for lost wages was that it was speculative, as calculated from A.R.’s tax returns. However, courts have long recognized that “many elements that go to proof of loss of earning capacity cannot be established with certainty, and the fact finder must be allowed to consider ‘the reasonably apparent probabilities as they appear from the evidence, together with []known facts....’” *State v. Loutsch*, 2003 WI App 16, ¶15, 259 Wis. 2d 901, 656 N.W.2d 781 (citation omitted; brackets and ellipses in *Loutsch*), *overruled on other grounds by State v. Fernandez*, 2009 WI 29, ¶¶38-40, 316 Wis. 2d 598, 764 N.W.2d 509. Here, the circuit court found that A.R.’s tax returns were a sufficient evidentiary basis for awarding lost wages as part of the restitution imposed. We agree with appellate counsel’s assessment that there would be no arguable merit to a claim challenging the circuit court’s restitution order.

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

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Simona L. Ramirez in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals