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DISTRICT II

May 29, 2024

To:

Hon. Paul Bugenhagen Jr.
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Patricia Sommer
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Adan Gomez Valverde
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2022AP1475-CRNM State of Wisconsin v. Adan Gomez Valverde (L.C. #2020CF1713)

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).

Attorney Patricia Sommer, as appointed counsel for Adan Gomez Valverde, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Gomez Valverde with a copy of the report and he was advised of his right to file a response. Gomez Valverde has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our

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

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Gomez Valverde pled no-contest to second-degree sexual assault of a child. Two counts of causing a child to view sexual activity and one count of child enticement were dismissed and read-in for sentencing purposes. The circuit court imposed a sentence of twelve years of initial confinement and thirteen years of extended supervision.

The no-merit report addresses whether Gomez Valverde's plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Gomez Valverde was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also purports to address Gomez Valverde's sentence. However, the discussion as to sentencing in the no-merit report addresses a fact pattern that is not present in this case. For example, the no-merit report states that Gomez Valverde waived a presentence investigation report (PSI), that Gomez Valverde was subject to a mandatory minimum sentence, and that there was a joint sentencing recommendation. None of those facts are correct. Our review of the record indicates that the State requested a PSI, that a PSI was prepared and filed, and that Gomez Valverde's trial counsel confirmed at sentencing that Gomez Valverde had the opportunity to review the PSI and that he had no corrections to it. There is no mandatory minimum sentence for second-degree sexual assault of a child, *see* WIS. STAT. §§ 948.02(2), 939.616, and the parties did not offer a joint sentencing recommendation to the court. Rather,

Gomez Valverde argued for probation and the State argued for sixteen to eighteen years of initial confinement.

The remainder of the sentencing discussion in the no-merit report fails to address the facts of Gomez Valverde's sentencing, and the no-merit report is therefore insufficient as to this issue. However, this court has conducted an independent review of the sentencing transcript, and we conclude that there would be no arguable merit to challenging the sentence imposed by the circuit court.

Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Gomez Valverde was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Gomez Valverde's character and rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence is within the legal maximum. There would be no arguable merit to challenging the sentence imposed.

Finally, the no-merit report concludes that Gomez Valverde received the proper amount of sentence credit. The record indicates that counsel stipulated to 234 days of sentence credit. Nothing before us indicates that there would be arguable merit to a challenge to the sentence credit awarded by the court or to a request for additional credit.

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 of the obligation to represent Gomez Valverde further in this appeal.²

Therefore,

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

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of further representation of Adan Gomez Ververde 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

² The record indicates that Gomez Valverde was assisted by a translator during hearings held in the circuit court. Before terminating representation, we trust appellate counsel will take any steps necessary to ensure that Gomez Valverde understands this opinion.