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DISTRICT II

July 3, 2024

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
Electronic Notice

LeAnne Karls
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Kelsey Jarecki Morin Loshaw
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Ever L. Cruz-Gonzalez #713129
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2023AP1526-CRNM State of Wisconsin v. Ever L. Cruz-Gonzalez (L.C. #2021CF65)

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).

Ever L. Cruz-Gonzalez appeals a judgment of conviction entered after he pled guilty to one count of kidnapping as a party to a crime and one count of felony bail jumping. His appellate counsel, Catherine Malchow, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Cruz-Gonzalez was advised of his right to file a response and has responded. On April 24, 2024, this court ordered appellate

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

counsel to file a supplemental no-merit report. Counsel did so on May 10, 2024.² Upon consideration of the no-merit report, the response, the supplemental report, 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.

The State charged Cruz-Gonzalez with one count of kidnapping as a party to a crime, one count of taking hostages as a party to a crime, one count of false imprisonment as a party to a crime, and three counts of felony bail jumping. According to the criminal complaint, Cruz-Gonzalez and his brother kidnapped a victim, referred to in the complaint as “V1,” held him hostage for three days, and stabbed him in the leg. The complaint further states that Cruz-Gonzalez committed the crimes while out on bond for a felony case in Dane County.

Pursuant to a plea agreement, Cruz-Gonzalez pled guilty to one count of kidnapping as a party to a crime and one count of felony bail jumping. The remaining charges were dismissed and read in. The circuit court accepted Cruz-Gonzalez’s pleas after conducting a colloquy with the assistance of an interpreter. The court also confirmed that Cruz-Gonzalez understood the plea questionnaire/waiver of rights form—which was provided in both English and Spanish—and that counsel reviewed the forms with Cruz-Gonzalez. Counsel told the court that he reviewed the appropriate forms with Cruz-Gonzalez with the assistance of an interpreter. The court sentenced Cruz-Gonzalez to ten years of initial confinement, followed by seven years of extended supervision on the kidnapping charge, and a consecutive one-year term of initial

² On November 17, 2023, this court received notice that the State Public Defender appointed Attorney Kelsey Jarecki Morin Loshaw to represent Cruz-Gonzalez. Attorney Loshaw filed the supplemental no-merit report.

confinement followed by one year of extended supervision on the felony bail-jumping charge. The court also ordered restitution to the victim, to be paid jointly and severally with Cruz-Gonzalez's brother, who was charged as a co-defendant. This no-merit report follows.

The no-merit report first addresses whether Cruz-Gonzalez's guilty pleas were knowing, intelligent, and voluntary. We agree with appellate 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 court, with the assistance of an interpreter, conducted a colloquy to ascertain that Cruz-Gonzalez 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 Cruz-Gonzalez's guilty pleas were knowing, intelligent, and voluntary. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

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, their impact on the victim, and Cruz-Gonzalez's character. 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 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 his response, Cruz-Gonzalez argues that his counsel was ineffective for failing to raise a coercion defense; specifically, that counsel failed to argue that Cruz-Gonzalez was scared of his brother and was forced to participate in the kidnapping. After sentencing, a defendant may only withdraw a guilty plea to correct a manifest injustice, such as ineffective assistance of counsel. *See State v. Krieger*, 163 Wis. 2d 241, 249–51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication that counsel rendered ineffective assistance because, as appellate counsel notes, the coercion defense was not available to Cruz-Gonzalez. A coercion defense is inapplicable to cases where a threat is made by the actor’s coconspirator. WIS. STAT. § 939.46; *State v. Dyleski*, 154 Wis. 2d 306, 310, 452 N.W.2d 794 (Ct. App. 1990). Cruz-Gonzalez and his brother were charged as coconspirators in this case. Counsel is not ineffective for failing to make meritless arguments. *See State v. Wheat*, 2002 WI App 153, ¶23, 256 Wis. 2d 270, 647 N.W.2d 441. Thus, Cruz-Gonzalez’s plea was valid and operated to waive all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Cruz-Gonzalez also contends that counsel was ineffective for failing to order a psychological exam to ensure he was able to understand the proceedings and that his plea was entered voluntarily, intelligently, and knowingly. Nothing in the record suggests that Cruz-Gonzalez was unable to understanding the proceedings. All of the hearings, including the plea hearing, were conducted with the assistance of an interpreter. At the plea hearing, Cruz-Gonzalez confirmed his understanding of the proceeding. Counsel confirmed that he reviewed the relevant forms and discussed Cruz-Gonzalez’s options with the assistance of an interpreter. Moreover, the plea questionnaire/waiver of rights form was provided in English and Spanish, demonstrating Cruz-Gonzalez’s understanding of the nature of the offenses, the penalties he faced, and the rights he was waiving. Appellate counsel’s no-merit report further

discusses Cruz-Gonzalez's education, his lack of a mental or physical disability diagnosis, and a previous plea in a Dane County case. In short, nothing in the record suggests that Cruz-Gonzalez was entitled to a psychological examination to determine his comprehension skills. The record demonstrates that Cruz-Gonzalez's pleas were knowing, voluntary, and intelligent.

Our independent review of the record reveals no other potential issues of arguable merit.³

Upon the foregoing,

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 Kelsey Jarecki Morin Loshaw is relieved of further representation of Ever L. Cruz-Gonzalez 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

³ We note that Cruz-Gonzalez's response asks this court to provide him with transcripts of the circuit court proceedings translated into Spanish. Cruz-Gonzalez has previously made this request to the court, which we denied on November 17, 2023. We again deny his request.