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DISTRICT I/II

January 16, 2013

To:

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Darce V. Decoro
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You are hereby notified that the Court has entered the following opinion and order:

2012AP882-CRNM State of Wisconsin v. Darce V. Decoro (L.C. # 2010CM1221)

Before Reilly, J.¹

Darce V. Decoro appeals from a judgment convicting him of resisting or obstructing a police officer as a repeater. Decoro's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Decoro received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Decoro's plea of guilty was knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether the nonproduction of a videotape of Decoro's arrest warrants a remand of the case to the circuit court.

With respect to the entry of the guilty plea, the record shows that the circuit court engaged in a colloquy with Decoro that satisfied the requirements of WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Decoro's guilty plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. Under the circumstances of the case, which were aggravated by Decoro's lengthy criminal record, the sentence of ten months in jail does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper" *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that

² One exception to this is that the circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Decoro's plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. WIS. STAT. § 971.08(2).

a challenge to Decoro's sentence would lack arguable merit.

Finally, with respect to the nonproduction of a videotape of Decoro's arrest, we agree with counsel that remand on this issue is not necessary. Prior to his plea, Decoro asked for any exculpatory evidence the State might have, including a videotape of his arrest taken from the camera of a police vehicle. The State indicated that it did not know whether such a videotape existed; however, it pledged to provide a copy of it to defense counsel if it did. Soon thereafter, Decoro entered his plea, and the issue of the videotape was not discussed again. At the subsequent plea hearing, Decoro acknowledged a factual basis for his conviction. Moreover, at sentencing, Decoro admitted that he swore at the police officer who pulled him over, became visually agitated, and flared his arms before he was placed under arrest for an unrelated matter. In light of these admissions, even if a videotape did exist of Decoro's arrest, we are satisfied that it would not contain exculpatory evidence. As a result, we conclude that no issue of arguable merit could arise from this issue.³

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Chris Bailey of further representation in this matter.

Upon the foregoing reasons,

³ We also note that there is nothing in the record to suggest that Decoro would not have entered his guilty plea had he seen the alleged videotape. That plea, which was pursuant to an agreement with the State, resulted in the dismissal of two criminal charges against Decoro.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Chris Bailey is relieved of further representation of Decoro in this matter.

Diane M. Fremgen
Clerk of Court of Appeals