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DISTRICT II

January 30, 2013

To:

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Circuit Court Judge
Ozaukee County Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2012AP1741-CRNM State of Wisconsin v. Ricardo Rodriguez (L.C. #2011CF82)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Ricardo Rodriguez appeals from a judgment convicting him of burglary while armed with a dangerous weapon and theft of movable property, both as a party to a crime. Rodriguez's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Rodriguez received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

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 Rodriguez's pleas were knowingly, intelligently and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether a basis exists for a motion for sentence modification.

With respect to the entry of Rodriguez's pleas, the record shows that the circuit court engaged in a colloquy with Rodriguez 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. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. Finally, according to the no-merit report, Rodriguez agrees with counsel that there is no basis to withdraw his pleas and that it would not be in his best interest to do so. For these reasons, we are satisfied that any challenge to the entry of Rodriguez's pleas would lack arguable merit.

With respect to Rodriguez's sentencing, the record reveals that the circuit court's decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing a sentence of ten years of imprisonment, the court considered the seriousness of the offense, Rodriguez's character and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Rodriguez's prior record, the sentence imposed 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). Accordingly, we are satisfied that a challenge to Rodriguez’s sentence would lack arguable merit.

Finally, with respect to whether a basis exists for a motion for sentence modification, the no-merit report indicates that Rodriguez has not been able to point to any fact which might constitute a “new factor” under *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975), warranting sentence modification.² The court is satisfied that the no-merit report properly analyzes this issue as without merit and this court will not discuss it further.

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 Michael J. Backes of further representation in this matter.

Upon the foregoing reasons,

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 Michael J. Backes is relieved of further representation of Rodriguez in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

² In discussing this issue, the no-merit report notes the absence of an event or development that “frustrates the purpose of the original sentence.” We remind counsel that “frustration of the purpose of the original sentence is not an independent requirement when determining whether a fact or set of facts alleged by a defendant constitutes a new factor.” *State v. Harbor*, 2011 WI 28, ¶48, 333 Wis. 2d 53, 797 N.W.2d 828.