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DISTRICT I

February 19, 2013

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

2012AP1315-CRNM State of Wisconsin v. Fidel Munoz Leon (L.C. #2011CF4728)

Before Curley, P.J., Kessler and Brennan, JJ.

Fidel Munoz Leon appeals a judgment convicting him of one count of repeated sexual assault of a child. Appellate counsel, Bradley J. Lochowicz, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),¹ and *Anders v.*

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

California, 386 U.S. 738, 744 (1967). Leon filed a response and Attorney Lochowicz has filed a supplemental no-merit report addressing the issues Leon raised in his response. After considering the no-merit report, the response, and the supplemental no-merit report, and after conducting an independent review of the record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to an appellate challenge to Leon's guilty plea. The plea colloquy complied in all respects with the requirements of WIS. STAT. § 971.08, and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The circuit court addressed whether Leon understood the elements of the charge against him, the maximum penalties he faced, and the constitutional rights he would be waiving by entering a plea. The circuit court also ascertained that Leon had reviewed a plea questionnaire and waiver-of-rights form with his attorney and that he understood the information explained on that form. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Leon acknowledged that the complaint provided a sufficient factual basis for the plea. We therefore conclude that there would be no arguable merit to an appellate challenge involving the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the sentence imposed on Leon was unduly harsh or excessive. The circuit court sentenced Leon to eighteen years of imprisonment, with eight years of initial confinement and ten years of extended supervision. The circuit court considered all of the factors relevant to a sentencing determination, including aggravating factors, like the fact that Leon's crimes had a severely negative impact on the child victim, and mitigating factors, like the fact that Leon did not have a

history of criminal behavior. Because the circuit court explained its application of the various sentencing considerations in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197, we conclude that there would be no arguable merit to a challenge to the sentence on appeal.

In his response, Leon asks that his eight-year term of initial confinement be shortened to five years. He expresses remorse for his actions, but states that he will not be eligible at this time for sex offender treatment given the length of his sentence. He also states that the circuit court indicated in its sentencing remarks that the sentence was too lengthy. After reviewing the sentencing transcript and the response, we disagree with Leon's characterization of the circuit court's comments. The circuit court stated that the sentence might be lengthy for someone who had never spent a day in prison before, but also stated that it believed that the sentence was appropriate given Leon's actions. As for Leon's request that the sentence be reduced, the length of his sentence was committed to the circuit court's discretion. A circuit court properly exercises its discretion if it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. *See State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. We will not overturn the circuit court's decision unless it makes an error of law or otherwise misuses its discretion, which it has not done here. There would be no arguable merit to an appellate claim that Leon's sentence should be reduced to five years.

Our independent review of the record reveals no potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Attorney Lochowicz of further representation of Leon in this matter.

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved of any further representation of Leon in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals