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DISTRICT II

May 22, 2013

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

2013AP424-CRNM State of Wisconsin v. Jose Gallegos Ramirez (L.C. #2011CF939)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Jose Gallegos Ramirez appeals from a judgment of conviction for conspiracy to deliver cocaine in excess of forty grams. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Gallegos Ramirez has filed a response to the no-merit report and counsel then filed supplemental no-merit reports. RULE 809.32(1)(e), (f). Upon consideration of these submissions and an independent

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

review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Gallegos Ramirez participated in two controlled drug buys by an undercover officer. He was charged with two counts each of conspiracy to deliver cocaine, maintaining a drug trafficking place, and misdemeanor bail jumping. He entered a guilty plea to the charge of which he is convicted and the other charges were dismissed as read-ins at sentencing. Gallegos Ramirez was sentenced to three years' initial confinement and three years' extended supervision.

The no-merit report addresses the potential issues of whether Gallegos Ramirez's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit. The record shows that the trial court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by 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, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14.² The sentence was based on appropriate considerations, including Gallegos Ramirez's lack of a prior record. The court's sentencing objective was deterrence and it did not want to depreciate the seriousness of the offense. The sentence was a demonstrably proper exercise of discretion. *See State v. Gallion*, 2004 WI 42, ¶¶40-43, 270 Wis. 2d 535, 678 N.W.2d 197. Further, we cannot conclude that the six-year sentence when measured against the maximum forty-year sentence is

² A Spanish interpreter was utilized at each hearing at which Gallegos Ramirez was present. In addition, Gallegos Ramirez's trial counsel spoke Spanish and went over the English plea questionnaire with Gallegos Ramirez in Spanish.

so excessive or unusual so as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response, Gallegos Ramirez suggests that the sentencing court lacked authority to require him to pay restitution of \$1200, the amount of buy money lost in the first drug buy. See *State v. Evans*, 181 Wis. 2d 978, 983-84, 512 N.W.2d 259 (Ct. App. 1994) (money expended by law enforcement agency for drug purchase cannot be recouped as victim restitution). He also claims his trial counsel was ineffective for making an unenforceable plea agreement that required restitution in the amount of the buy money.³ As counsel points out in the supplemental no-merit reports, *Evans* is not controlling here because WIS. STAT. § 973.06(1)(am)1., enacted after the *Evans* decision, explicitly authorizes buy money to be taxed against a defendant for collection. Although the sentencing court referred to the buy money as “restitution,” it was not included on the judgment of conviction as restitution. The buy money was properly taxed against Gallegos Ramirez.

Our review of the record discloses no other potential issues for appeal.⁴ Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Gallegos Ramirez further in this appeal.

³ Gallegos Ramirez states that he does not wish to withdraw his guilty plea based on the alleged ineffectiveness of counsel but that he only seeks to vacate his obligation to pay the \$1200.

⁴ Any other possible appellate issues are waived because the guilty plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved from further representing Jose Gallegos Ramirez in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals