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DISTRICT II

June 19, 2013

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

2012AP2312-CRNM State of Wisconsin v. Jose A. Ferrer (L.C. # 2011CF554)

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

Jose A. Ferrer appeals from a judgment of conviction for one count of second-degree sexual assault of a child under sixteen years of age, contrary to WIS. STAT. §§ 948.02(2) and 939.50(3)(c) (2011-12).¹ Upon Ferrer's guilty plea, the trial court imposed a nine-year bifurcated sentence, with three years of initial confinement and six years of extended supervision. Ferrer's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE

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

809.32, and *Anders v. California*, 386 U.S. 738 (1967). Ferrer received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent 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.

In 2011, a criminal complaint was filed charging Ferrer with three counts involving the same victim: (1) second-degree sexual assault of a child under sixteen years of age; (2) possession of child pornography; and (3) sexual intercourse with a child who had attained the age of sixteen. According to the criminal complaint, Ferrer was involved in a sexual relationship with a minor, R.F., and the charges were based on a specific incident of sexual contact the day before R.F.'s sixteenth birthday, pictures of R.F. discovered on Ferrer's cell phone, and acts of intercourse after R.F. turned sixteen years old. Pursuant to a plea agreement, Ferrer pled guilty to count one, and counts two and three along with a separate bail jumping case were dismissed and read in. The State agreed to cap its recommendation at five years of initial confinement and five years of extended supervision.

The no-merit report addresses whether Ferrer's plea was freely, voluntarily, and knowingly entered, and whether his sentence was the result of an erroneous exercise of discretion. Based on our independent review of the record, we agree with counsel's conclusion that these issues lack arguable merit.

With regard to Ferrer's guilty plea, the record demonstrates that the trial court engaged in an appropriate 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. The trial court specifically ascertained Ferrer’s understanding of the nature of and factual basis for the charge, the parties’ plea agreement, and that the court was not bound by the parties’ agreement or recommendations. The trial court correctly recited the maximum penalties and explained the significance of read-in charges. The court specifically drew Ferrer’s attention to the completed plea questionnaire on file and ascertained that he reviewed, signed, and understood its contents. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights form is competent evidence of a knowing, intelligent, and voluntary plea). The form and its attachments correctly stated the elements of the offense and the constitutional rights waived by a guilty plea. Ferrer personally acknowledged that he had reviewed and understood the offense elements and that he understood and wished to waive the enumerated constitutional rights. Though the trial court did not read the deportation warning contained in the plea questionnaire, the record establishes that Ferrer was born in Detroit, Michigan. Nothing in the record suggests that Ferrer’s plea “is likely to result in ... deportation, exclusion from admission to this country or denial of naturalization.” Sec. 971.08(2). No issue of merit exists from the plea taking.

At sentencing, as discussed in appellate counsel’s no-merit report, the State adhered to the terms of the parties’ plea agreement. In fashioning the sentence, the court considered the seriousness of the offense, the defendant’s character and history, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court first considered probation as the least restrictive option, but determined that probation would not adequately protect the public given Ferrer’s prior convictions for similar conduct and that the present offenses were committed in violation of a court order and in the midst of close parental

supervision. We conclude that the trial court properly exercised its discretion at sentencing. Further, the nine-year bifurcated sentence was well below the forty-year maximum authorized by statute, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive or unusual as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no meritorious challenge to the trial court's sentencing decision.

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

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 Beth A. Eisendrath is relieved from further representing Jose A. Ferrer in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals