



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT I**

August 28, 2015

To:

Hon. Jonathan D. Watts  
Circuit Court Judge  
Br. 15  
821 W State St  
Milwaukee, WI 53233

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State Street  
Milwaukee, WI 53233

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

Michelle L. Velasquez  
Asst. State Public Defender  
735 N. Water St., Ste. 912  
Milwaukee, WI 53202-4116

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

German Herrera-Pavon 617570  
Stanley Corr. Inst.  
100 Corrections Drive  
Stanley, WI 54768

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

---

2015AP798-CRNM      State of Wisconsin v. German Herrera-Pavon (L.C. #2014CF185)

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

German Herrera-Pavon appeals a judgment convicting him of endangering safety by use of a dangerous weapon. Attorney Michelle L. Velasquez filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Herrera-Pavon was informed of his right to respond, but he has not done so. After considering the no-merit report and conducting an independent review

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

of the record, we conclude that there are no issues of arguable merit that Herrera-Pavon could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be any arguable basis to a claim that Herrera-Pavon's guilty plea was not knowingly, intelligently and voluntarily entered. In order to ensure that a defendant is knowingly, intelligently and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although "not intended to eliminate the need for the court to make a record demonstrating the defendant's understanding of the particular information contained therein," the circuit court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing "the extent and degree of the colloquy otherwise required between the trial court and the defendant." *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

The prosecutor stated the plea agreement on the record and Herrera-Pavon confirmed that the agreement as stated was in accord with his understanding. The circuit court explained to Herrera-Pavon that it could sentence him up to the maximum sentence allowed by law and was not required to follow the recommendation of either the prosecutor or Herrera-Pavon's lawyer. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court also explained that, while Herrera-Pavon was pleading guilty to only endangering safety by use

of a dangerous weapon based on the plea agreement, the possession-of-cocaine charge would be dismissed and “read in,” which meant that the court could consider the facts and circumstances of that charge when sentencing Herrera-Pavon on the endangering safety charge. Herrera-Pavon said that he understood.

The circuit court conducted an extensive colloquy with Herrera-Pavon during which it reviewed the elements of the crime with Herrera-Pavon, the maximum penalty and the constitutional rights and other defenses Herrera-Pavon was waiving by pleading guilty. Herrera-Pavon said that he understood. The circuit court informed Herrera-Pavon that if he pled guilty, he would almost certainly be deported because he is not a citizen of the United States of America, and made sure that Herrera-Pavon had discussed this in depth with his lawyer. *See State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1.

The circuit court ascertained that Herrera-Pavon had reviewed the plea questionnaire and waiver-of-rights form, and an addendum to the form, with his lawyer, who read it to him in Spanish. Herrera-Pavon told the court that he understood the information. The circuit court asked Herrera-Pavon whether he had reviewed the criminal complaint. Herrera-Pavon said that his lawyer had read it to him. After a dialogue with Herrera-Pavon about the meaning of “intent” as applied to this crime, the circuit court accepted the allegations in the complaint as the basis for the plea.

A Spanish language interpreter assisted Herrera-Pavon throughout the proceedings. Herrera-Pavon said that he was thirty-four years old, had completed six years of school in Mexico and understood about fifty percent of what he heard in English. The circuit court ascertained that Herrera-Pavon had not used any drugs or alcohol, and had not taken any

medicine, within the last twenty-four hours, and repeatedly asked questions of Herrera-Pavon about all aspects of the plea to ensure that Herrera-Pavon had a full understanding of the proceedings. Based on the circuit court's thorough plea colloquy with Herrera-Pavon, and Herrera-Pavon's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to Herrera-Pavon's sentence. The circuit court sentenced Herrera-Pavon to eight years of imprisonment, with four years of initial confinement and four years of extended supervision. The circuit court placed emphasis on the seriousness of the offense, concluding that the crime was aggravated because Herrera-Pavon was extremely intoxicated and six shots were fired, each of which could have resulted in injury or death to a person. The circuit court stated that, had it not been for Herrera-Pavon's good character in general, he would likely have received near the maximum sentence based on his actions. The circuit court considered the need to protect the public, noting that Herrera-Pavon's conduct created a danger to the community that necessitated that he be imprisoned for a period of time. However, the circuit court also considered mitigating factors, like Herrera-Pavon's positive character, his work history, the fact that he accepted responsibility for what he did, his remorse and his cooperation with the police. Because the circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines 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 there would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Michelle L. Velasquez of further representation of Herrera-Pavon.

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

IT IS FURTHER ORDERED that Attorney Michelle L. Velasquez is relieved of any further representation of Herrera-Pavon in this matter. *See* WIS. STAT. RULE 809.32(3).

---

*Diane M. Fremgen  
Clerk of Court of Appeals*