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May 1, 2019

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

2018AP1472-CRNM	State of Wisconsin v. Alberto S. Galvan (L.C. #2013CF295)
2018AP1473-CRNM	State of Wisconsin v. Alberto S. Galvan (L.C. #2013CF522)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated cases, Alberto S. Galvan appeals from judgments convicting him of fleeing or eluding a police officer on two separate occasions and from an order denying his motion for postconviction relief. Appointed counsel has filed a no-merit report pursuant to WIS.

STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Galvan has filed a response, much of it addressing Racine County case No. 2013CF1711, which is not part of this no-merit appeal. We conclude after our independent review of the record that this case is appropriate for summary disposition, *see* WIS. STAT. RULE 809.21, and that there is no arguable merit to any issue that could be raised on appeal.

Galvan pled guilty to fleeing a traffic officer in February 2013 and again in April 2013. He was involved in a third fleeing case in December 2013 resulting in a car crash causing serious injuries to another driver, leaving her disabled and with hundreds of thousands of dollars in medial bills and lost wages. Pursuant to the parties' plea agreement, the State agreed to dismiss and read in a resisting/obstructing count from the February case as well as several counts from the December case and to recommend a global sentence for all three cases consisting of ten to twelve years' initial confinement (IC) with extended supervision (ES) left to the court's discretion. The court sentenced Galvan to one year IC and two years' ES on the first fleeing charge and to a consecutive one and one-half years' IC and two years' ES on the second.

Postconviction, Galvan sought plea withdrawal in regard to the April case on grounds that defense counsel, John Campion, was ineffective. The criminal complaint in the April case alleged that Dayshane Anderson, the mother of Galvan's daughter, and Lina Orta, his mother, told police Galvan was the driver of the fleeing vehicle. Despite pleading guilty to the charge, Galvan later asserted that he was not the driver and that Campion failed to advise him that Anderson recanted her allegation or that Orta denied telling police he was the driver. Galvan

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

further alleged in the motion that Campion never discussed with him the April case's factual allegations, such that he was unaware of the allegations at the time he entered his pleas and that Campion assured him that any sentence he received in the April case would be concurrent to his sentence in the third, more serious, case. Galvan asserted that, but for Campion's ineffectiveness, he would not have pleaded guilty in the April case.

Campion, Anderson, Orta, and Galvan testified at the postconviction motion hearing. Campion testified that neither Anderson nor Orta ever told him that Galvan was not the driver in the April case and denied ever promising Galvan that his sentences in either the February or April case would run concurrently with the sentence in the December case. Anderson testified that she and her and Galvin's young daughter were passengers in her car, which was driven by "Mark," a man she had met at a club the week before but whose last name she did not know. Anderson said that when police attempted to pull them over, she and the child jumped out and Mark sped off. Orta testified that she never told police Galvin was driving the vehicle and that she did not recall having a conversation with Campion on that topic. Galvan testified that when he pleaded guilty, he was unaware of the allegations or evidence against him in the April case, as he was more focused on the third case, as it carried far greater penalties.

The court determined that Campion was not ineffective and denied Galvan's motion for plea withdrawal. Specifically, it found Campion to be credible and that Anderson, Orta, and Galvan were not, that Galvan was fully informed of the allegations against him in the April case, and that neither Anderson nor Orta had informed Campion that the statements attributed to them in the police reports were untrue. This no-merit appeal followed.

The no-merit report considers three possible issues: (1) whether Galvan's pleas were not knowingly, intelligently, and voluntarily entered, or whether a factual basis was lacking; (2) whether the circuit court erroneously exercised its discretion in sentencing Galvan; and (3) whether the circuit court erred in denying Galvan's postconviction motion for plea withdrawal. As our review of the record satisfies us that the no-merit report thoroughly analyzes these issues as without merit, we address them no further.

Galvan contends in his response that he should be allowed to withdraw his plea because Campion failed to explain all of the elements and possible penalties for attempting to flee and elude an officer. The record belies his claim. The plea questionnaire/waiver of rights forms Galvan signed in both the February and April cases list the elements and penalties and state that his attorney explained the elements to him. Galvan also told the court at the plea hearing that he reviewed the plea questionnaire with Campion and signed it to signify that he understood everything on it. Even if Campion had not explained the elements or potential penalties to the degree Galvan thinks necessary, before accepting his guilty pleas the court itself reviewed with him the elements of the charged offense of fleeing an officer and the penalties he faced. The record satisfies us that Galvan understood his crimes and potential penalties.

Galvan also raises complaints in regard to the third fleeing case. That case is not a part of this appeal. We need not address those claims.

Galvan also contends the circuit court failed to determine the extent of his education and general comprehension and whether he understood the law in relation to the facts of his case. Once more, the record does not support this allegation. The court began by confirming that Galvan reviewed the plea questionnaire with Campion and understood what was in that

document. Galvan indicated on the plea questionnaire that he understands the English language and the charges against him. A plea questionnaire may properly be used by the court “when discharging its plea colloquy duties.” *State v. Hoppe*, 2009 WI 41, ¶¶30-31, 317 Wis. 2d 161, 765 N.W.2d 794. Galvan also repeatedly told the court he understood the proceedings. The PSI, which the court told Galvan it had reviewed, indicated that Galvan went to “tenth or eleventh” grade; Galvan said he did poorly because he “was lazy” and often truant, not due to incapability.

Galvan next contends he should be resentenced because Campion “disqualified” him from being considered for probation and from participation in the Earned Release or Challenge Incarceration Programs. Galvan’s three fleeing cases were part of a global plea agreement. “Probation is not a matter of right to a defendant, but instead is a privilege” and is a matter within the circuit court’s broad discretion. *State v. Heyn*, 155 Wis. 2d 621, 627, 456 N.W.2d 157 (1990). Probation would have seriously depreciated the severity of his offenses. Whether to make him eligible for either the Earned Release or Challenge Incarceration Program likewise was a matter within the circuit court’s discretion. *See* WIS. STAT. § 973.01(3g), (3m).²

The remainder of Galvan’s resentencing arguments have no merit whatsoever. They call into question the court’s exercise of sentencing discretion, which we already have concluded was not erroneous. They also implicate the sentence resulting from his third fleeing case. Again, that case is not before us in this appeal. A defendant’s disappointment in his or her sentence is no basis for either plea withdrawal or resentencing.

² At the postconviction motion hearing, the court found Galvan to be eligible for Earned Release while serving the final consecutive sentence in the third fleeing case.

Our review of the record discloses no other potential issues for appeal. Galvan's guilty pleas waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the pleas, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Galvan further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leon W. Todd III is relieved from further representing Galvan in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals