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DISTRICT II

May 27, 2026

To:

Hon. Steven M. Cain
Circuit Court Judge
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Carlos Bailey
Electronic Notice

John Blimling
Electronic Notice

Rafael E. Garay #497009
Redgranite Correctional Institution
P.O. Box 925
Redgranite, WI 54970-0925

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

2023AP2150-CRNM State of Wisconsin v. Rafael E. Garay (L.C. #2022CF118)

Before Gundrum, Grogan, and Lazar, 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).

Rafael E. Garay appeals from a judgment of conviction entered on his guilty pleas to felony bail jumping and operating a motor vehicle while intoxicated (OWI), as a sixth offense. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). This court granted Garay several extensions of time to file a response to counsel's no-merit report, which he has done. After reviewing the record,

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

counsel's report, and Garay's response, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Garay was convicted following a guilty plea to felony bail jumping and OWI, sixth offense. The charges stemmed from an incident in which Garay was pulled over when a registration check indicated that the registered owner of the vehicle, Garay, had a suspended driver's license. Law enforcement later discovered during the investigation on the scene that Garay also had an extraditable in-state warrant and was subject to a prohibited alcohol concentration (PAC) of .02; a subsequent blood test revealed a blood alcohol concentration of .093. Three additional felony charges were dismissed and read in as a result of the agreement with the State.²

At the time of sentencing, Garay had open OWI cases in other Wisconsin counties. For Garay's offenses, the circuit court imposed an aggregate sentence of seven years of initial confinement and seven years of extended supervision, plus fines, fees, and other OWI-related conditions. Garay subsequently filed a motion in the court seeking resentencing or sentence modification so that he could be eligible for early release from confinement if he completed substance abuse training. The court denied the motion, finding there was no new factor warranting modification and Garay's apparent belief that the sentence was too harsh or excessive is not a basis for modification. This no-merit appeal follows.

² The dismissed and read-in charges were two counts of felony bail jumping and operating a motor vehicle with a prohibited alcohol concentration, as a fifth or sixth offense.

The no-merit report addresses: (1) whether the circuit court properly exercised its discretion in denying Garay's motion to suppress evidence he claimed was seized in violation of his constitutional rights; (2) whether Garay's plea was entered knowingly, voluntarily, and intelligently; and (3) whether the court properly exercised its discretion at sentencing. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit, and we will not discuss them further.

As noted, Garay filed a response to counsel's no-merit report. The response discusses issues addressed in the no-merit report, including suppression of the evidence, which we will not repeat. It also raises a claim of ineffective assistance for trial counsel's failure to properly investigate. We conclude that there was no evidence of ineffective assistance of counsel in the record before us and we will not discuss this issue further. Furthermore, Garay has not demonstrated that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial. Absent a showing of prejudice, we are not persuaded that Garay's response presents an issue of arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32. Therefore,

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 Carlos Bailey is relieved from further representing Rafael E. Garay in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals