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DISTRICT II

February 28, 2018

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

2017AP1402-CRNM State of Wisconsin v. Perfecto Navarro, Jr. (L.C. #2016CF820)

Before Neubauer, C.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).

Perfecto Navarro, Jr., appeals from a judgment convicting him of failure to update his sex offender registration, as a repeater. Navarro's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(1967). Navarro was advised of his right to file a response but has elected not to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

As a lifetime sex-offender registrant, Navarro must advise the Sex Offender Registry Program of a change of address within ten days. WIS. STAT. § 301.45(1g)(dL) and (4)(a). On two occasions in 2016, he failed to advise SORP that he was not living at his last reported address. Numerous efforts to contact him were unsuccessful. Navarro pled guilty and the court imposed a sentence of three years' initial confinement plus three years' extended supervision. This no-merit appeal followed.

The no-merit report addresses three potential issues: whether Navarro should attempt to withdraw his guilty plea or otherwise challenge the plea process; whether the circuit court erroneously exercised its discretion by imposing an unduly harsh and unreasonable sentence; and whether Navarro should seek sentence modification. We agree with appellate counsel that none of these issues have arguable merit.

During the course of a plea hearing, a circuit court must address the defendant personally and fulfill several duties under WIS. STAT. § 971.08 and judicial mandates to ensure that the guilty plea is constitutionally sound. *State v. Brown*, 2006 WI 100, ¶¶34-36, 293 Wis. 2d 594, 716 N.W.2d 906. The court conducted a thorough colloquy, supplemented by reference to the plea questionnaire/waiver of rights form, and Navarro expressed his understanding on every point. Further, the record reveals nothing that would constitute a manifest injustice such that

Navarro could seek plea withdrawal. *See State v. James*, 176 Wis. 2d 230, 236-37, 500 N.W.2d 345 (Ct. App. 1993).

The no-merit report also considers whether a nonfrivolous argument could be made that Navarro's sentence is overly harsh or otherwise the result of an erroneous exercise of discretion. None could. The court considered the gravity of the offense, Navarro's character, and the need to protect the public from him. *See State v. Davis*, 2005 WI App 98, ¶13, 281 Wis. 2d 118, 698 N.W.2d 823. The court explained that it ordered the sentence that it did because of his "ugly history of criminal activity," the "depraved" nature of his original sex offense, his record of noncompliance with supervision, and the "extreme danger" he poses to the public. With the penalty enhancer, Navarro faced up to ten years' imprisonment and a fine of up to \$10,000. His six-year total sentence does not shock the public sentiment or violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

Finally, the report considers whether there is any basis on which Navarro might seek to have his sentence modified. A circuit court has authority to modify a sentence when a new factor is presented or the court determines that the sentence is illegal, void, or unduly harsh or unconscionable. *State v. Harbor*, 2011 WI 28, ¶35 & n.8, 333 Wis. 2d 53, 797 N.W.2d 828. A court also has authority to vacate a sentence and resentence the defendant if the court relied on inaccurate information at the original sentencing. *Id.*, ¶35 n.8. Our review of the record confirms counsel's conclusion that none of these situations exist.

Our review of the record discloses no other potential issues for appeal. Navarro's guilty plea waived the right to raise nonjurisdictional defects and defenses arising from proceedings

before entry of the plea, including alleged 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 Navarro further 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 Michael J. Backes is relieved from further representing Navarro 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