



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

DISTRICT II

December 26, 2018

To:

Hon. Angela W. Sutkiewicz
Circuit Court Judge
615 N. 6th St.
Sheboygan, WI 53081

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

Erica L. Bauer
Bauer & Farris, LLC
103 W. College Ave., Ste. 410
Appleton, WI 54911

Jason R. Farris
Bauer & Farris, LLC
103 W. College Ave., Ste. 410
Appleton, WI 54911

Joel Urmanski
District Attorney
615 N. 6th St.
Sheboygan, WI 53081

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Ramon J. Torres 00867-089
USP Tucson, U.S. Penitentiary
P.O. Box 24550
Tucson, AZ 85734

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

2017AP826-CRNM State of Wisconsin v. Ramon J. Torres (L.C. #2014CF441)

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).

Ramon J. Torres appeals from a judgment of conviction entered upon his no-contest pleas to attempted second-degree sexual assault and strangulation or suffocation, both as crimes of domestic abuse. Torres's 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 (1967). Torres 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 no-merit report and our 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 July 2014, police were dispatched to Torres's residence in response to a woman screaming for help on a 911 emergency line. The woman reported that she lived in the house with Torres, a relative. According to the complaint, the victim woke up to find that her blanket had been removed, her shorts were unbuttoned and unzipped, and Torres was trying to put his hands down her shorts to touch her genitals. He was wearing only his boxer shorts. The victim fought her way free, and Torres grabbed her and tried to force her into the bathroom and then into his bedroom. During the struggle, Torres had his arm around the victim's neck and was holding on tightly such that she had difficulty breathing and bit Torres's neck. Eventually, Torres forced the victim over a couch and was thrusting his pelvis against her buttocks. The State filed a complaint charging Torres with attempted third-degree sexual assault, attempted second-degree sexual assault, strangulation and suffocation, and battery, all alleged as acts of domestic abuse.

Pursuant to a negotiated settlement, Torres entered no-contest pleas to attempted second-degree sexual assault and to strangulation and suffocation, both as crimes of domestic abuse. The State moved to dismiss and read in the other two counts and agreed to read in but not charge

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

a separate matter identified as DA case No. 14SB2722. In terms of sentencing, the State agreed to cap its recommendation at ten years' initial confinement followed by seven years' extended supervision on the sexual assault, and at three years' initial confinement followed by three years' extended supervision on the suffocation, to run concurrent with each other but consecutive to a revoked federal parole sentence.² The court imposed the following: on the attempted second-degree sexual assault, twelve and one-half years' initial confinement followed by seven years' extended supervision; on the strangulation and suffocation, three years' initial confinement followed by three years' extended supervision. The sentences were ordered to run consecutive to each other and to Torres's revoked federal sentence. Torres appeals.

Appointed counsel's no-merit report addresses whether Torres's pleas were knowingly, intelligently, and voluntarily entered. The record shows that the circuit court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), *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. Additionally, the circuit court properly relied upon Torres's signed plea questionnaire. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with appointed counsel that a challenge to the entry of Torres's no-contest pleas would lack arguable merit.

Appointed counsel's no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678

² Torres had been paroled from federal life sentences for kidnapping, murder, and conspiracy to commit murder, at the time he committed the instant crimes.

N.W.2d 197 (citation omitted). The circuit court’s sentencing remarks show that it considered the seriousness of the offenses, Torres’s character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis.2d 594, 712 N.W.2d 76. The circuit court permissibly designated as its primary concern “the protection of the public and the dangerousness of the defendant.” *See id.* (the weight to be given each factor is committed to the circuit court’s discretion). Here, the court considered the violent nature of the offense, the “very, very serious” assaultive uncharged read-in offenses, and that at the time of the offense, Torres was on parole for serious federal convictions including kidnapping and murder. Under the circumstances, it cannot reasonably be argued that Torres’s sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Torres’s sentence would lack arguable merit.

Finally, we agree with appointed counsel’s conclusion that no issue of arguable merit arises from the circuit court’s decision to deny Torres’s oral presentence motion for plea withdrawal. A defendant seeking to withdraw his or her plea before sentencing bears the burden of showing by a preponderance of the evidence that there is a fair and just reason for plea withdrawal. *State v. Garcia*, 192 Wis. 2d 845, 862, 532 N.W.2d 111 (1995). After the plea hearing, trial counsel informed the court that Torres may have a desire to withdraw his pleas. The State filed a written objection. The court set a hearing at which Torres made an oral motion to withdraw his pleas, asserting that he entered his pleas in haste. The circuit court determined that Torres’s reason reflected a mere change of heart and denied the motion. *See State v. Canedy*, 161 Wis. 2d 565, 583, 469 N.W.2d 163 (1991) (to be “fair and just,” the reason must be more than a defendant’s change of mind and desire to have a trial). The court encouraged Torres to file a formal motion if there were additional facts and evidence supporting plea withdrawal.

No written motion was filed. The court properly exercised its discretion. *See State v. Jenkins*, 2007 WI 96, ¶30, 303 Wis. 2d 157, 736 N.W.2d 24 (the decision to grant or deny a presentence motion for plea withdrawal is committed to the circuit court's discretion).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Torres on appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved from further representing Ramon J. Torres in this appeal. 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