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 I

June 9, 2020

To:

Hon. Joseph R. Wall
Circuit Court Judge
Safety Building, Rm. 313
821 W. State St.
Milwaukee, WI 53233

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

Michael S. Holzman
Rosen and Holzman
400 W. Moreland Blvd., Ste. C
Waukesha, WI 53188

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

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

Jeranek D. Diaz 506678
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2019AP1686-CRNM State of Wisconsin v. Jeranek D. Diaz (L.C. # 2017CF4741)
2019AP1687-CRNM State of Wisconsin v. Jeranek D. Diaz (L.C. # 2018CF1672)

I approve – TGD – 6/1/2020

Before Dugan, Donald and White, 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).

Jeranek D. Diaz appeals judgments convicting him of two counts of second-degree sexual assault of a child. His appellate 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). Diaz received a copy of the report and was notified of his right to file a response, but he did not respond. After considering the no-merit report and conducting an independent review of the record, as mandated by Anders, we conclude that there are no arguably meritorious issues that could be raised in these appeals. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.

Diaz was initially charged with one count of first-degree sexual assault, contact with a child under the age of thirteen, and one count of first-degree sexual assault of a child, sexual intercourse with a child under the age of twelve, involving two different victims. Six months later, a second criminal action was initiated against Diaz, charging him with one count of attempted repeated sexual assault of the same child and one count of repeated sexual assault of the same child involving a third victim. The cases were joined for trial. On the day of trial, Diaz entered into a plea agreement with the State. He pled guilty to two reduced charges of second-degree sexual assault, sexual intercourse with a child under the age of sixteen. The remaining counts were dismissed and read-in for purposes of sentencing. The circuit court sentenced Diaz to twenty-seven years of imprisonment on each count, with twelve years of initial confinement and fifteen years of extended supervision, to be served concurrently.

The no-merit report first addresses whether Diaz's pleas were knowingly, voluntarily, and intelligently entered. The circuit court conducted a guilty plea colloquy with Diaz that complied with the circuit court's obligations when accepting a plea. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The record—including the

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

plea questionnaire and waiver of rights form and addendum, the attached jury instructions describing the elements of the crimes to which Diaz pled guilty, and the plea hearing transcript—demonstrates that Diaz entered his guilty plea knowingly, intelligently, and voluntarily. Although the circuit court did not specifically address all of the constitutional rights Diaz was waiving, the circuit court addressed most of the rights and ensured that Diaz had reviewed the plea questionnaire and waiver of rights form and addendum?, which listed the rights, with his counsel. There would be no arguable merit to a challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Diaz. The circuit court discussed the sentencing factors that it viewed as relevant to achieving its sentencing goals. *See* ***State v. Gallion***, 2004 WI 42, ¶¶41-43, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence that the circuit court imposed was well within the maximum sentence allowed by law and cannot be considered unduly harsh or unconscionable in light of Diaz's extensive criminal behavior. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Therefore, we conclude that there is no arguable merit to a challenge to the circuit court's exercise of sentencing discretion.

Finally, the no-merit report addresses whether Diaz could argue that there was insufficient evidence to support his conviction. Counsel explains that Diaz would like counsel to argue that he should be allowed to withdraw his plea and proceed to trial because there was not enough evidence against him to support his convictions. In particular, Diaz would like counsel to raise the fact that there was no physical evidence connecting him to the sexual assaults. These arguments would have no arguable merit if counsel raised them because Diaz waived his right to

challenge the evidence against him when he entered his guilty plea. ***County of Racine v. Smith***, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984).

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the judgments, and discharge appellate counsel of the obligation to represent Diaz.

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

IT IS FURTHER ORDERED that Attorney Michael S. Holzman is relieved from further representing Jeranek D. Diaz. *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