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 IV

December 10, 2020

To:

Hon. Todd L. Ziegler
Circuit Court Judge
Monroe County Courthouse
112 S. Court St., Rm. 301
Sparta, WI 54656

Shirley Chapiewsky
Clerk of Circuit Court
Monroe County Courthouse
112 S. Court St., Rm. 2200
Sparta, WI 54656

Gregory Bates
Bates Law Offices
P.O. Box 70
Kenosha, WI 53141-0070

Kevin D. Croninger
District Attorney
112 S. Court St., #201
Sparta, WI 54656-1772

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

Adalberto M. Quinonez 673008
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2019AP2190-CRNM State of Wisconsin v. Adalberto M. Quinonez (L.C. # 2018CF123)

Before Kloppenburg, Graham, and Nashold, 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).

Attorney Gregory Bates, appointed counsel for Adalberto Quinonez, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)[1] and

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

Anders v. California, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Quinonez's plea or sentencing. Quinonez was sent a copy of the report, and has filed a response. Counsel has filed a supplemental no-merit report. Upon independently reviewing the entire record, as well as the no-merit report, response, and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Quinonez was charged with first-degree intentional homicide; stalking resulting in bodily harm, as domestic abuse; criminal trespass, as domestic abuse; and misdemeanor bail jumping. Pursuant to a plea agreement, Quinonez pled guilty to first-degree intentional homicide and stalking resulting in bodily harm, as domestic abuse; the remaining charges were dismissed and read-in; another criminal case was dismissed; and the State agreed to recommend eligibility for release to extended supervision after thirty years on the homicide conviction and a concurrent sentence on the stalking conviction. The court sentenced Quinonez to life imprisonment with eligibility for extended supervision after twenty-five years on the homicide conviction, and a concurrent term of one year of initial confinement and one year of extended supervision on the stalking conviction.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Quinonez's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Quinonez signed, satisfied the court's mandatory duties to personally address Quinonez and determine information such as Quinonez's understanding of the nature of the charges and the

range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Quinonez's plea would lack arguable merit. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Quinonez has filed a response asserting that he was denied the effective assistance of counsel in connection with his decision to enter a plea because his counsel failed to advise him that he had a defense to the crime of first-degree intentional homicide. Specifically, Quinonez asserts that he acted in the "heat of passion," and that the State would not have been able to prove his intent to kill at trial. As we understand his argument, Quinonez argues that his trial counsel should not have allowed him to plead guilty to first-degree intentional homicide, and should have instead either negotiated a better plea deal or challenged the State's ability to prove intent at trial. Finally, Quinonez also argues that his counsel was ineffective by failing to pursue an insanity defense based on a claim that Quinonez was not in his right mind at the moment of the homicide.

No-merit counsel asserts in a supplemental no-merit report that there would be no arguable merit to a claim that trial counsel was ineffective by failing to pursue an adequate provocation defense. *See* ***State v. Schmidt***, 2012 WI App 113, ¶6, 344 Wis. 2d 336, 824 N.W.2d 839 ("Adequate provocation is an affirmative defense to first-degree intentional homicide that mitigates the offense to second-degree intentional homicide."). No-merit counsel concludes that the facts of this case would not have supported this defense. Counsel notes that the record indicates that Quinonez knew that his wife was in a romantic relationship with the victim for a

six-month period before the homicide, that he knew that his wife was pregnant with the victim's child and living with him for two weeks before the homicide, and that on the day of the homicide, Quinonez obtained a gun from his place of employment, drove to the victim's place of employment, and then shot the victim in the back as the victim was running away from him. No-merit counsel also concludes that there would be no arguable merit to a claim of ineffective assistance of counsel for failing to negotiate a better plea deal, noting that a defendant is not entitled to a perfect defense, only a reasonably effective one. *See* ***State v. Robinson***, 177 Wis. 2d 46, 56, 501 N.W.2d 831 (Ct. App. 1993).

Although a valid guilty plea waives all non-jurisdictional defenses, ***Kelty***, 294 Wis. 2d 62, ¶18, a plea that was entered based on ineffective assistance of counsel is a manifest injustice that entitles a defendant to plea withdrawal, ***State v. Bentle***y, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996). Here, however, we conclude that there would be no arguable merit to a claim of ineffective assistance of counsel for failing to advise Quinonez to pursue a defense of adequate provocation, lack of intent, or insanity at trial, or to seek a more favorable plea deal, rather than plead guilty. *See* ***Robinson***, 177 Wis. 2d at 55-56 (claim of ineffective assistance of counsel "must show that counsel's representation fell below an objective standard of reasonableness" and that the deficient performance prejudiced the defendant).

First, we agree with counsel's assessment that, on the undisputed facts of this case as set forth in the criminal complaint, the presentence investigation report, and the alternative sentencing memorandum, there would be no arguable merit to a claim that counsel fell below an objective standard of reasonable representation by failing to advise Quinonez to proceed to trial and pursue a defense of adequate provocation. "The defense applies if death was caused under the influence of adequate provocation …." *See* ***Schmidt***, 344 Wis. 2d 336, ¶6. "'Adequate'

means sufficient to cause complete lack of self-control in an ordinarily constituted person[] … [and] '[p]rovocation' means something which the defendant reasonably believes the intended victim has done which causes the defendant to lack self-control completely at the time of causing death." ***Id.*** The adequate provocation defense requires a showing of "[c]omplete loss of self-control," that is, "an extreme mental disturbance or emotional state … in which a person's ability to exercise judgment is overcome to the extent that the person acts uncontrollably," and has both an objective and subjective component. ***Id.***, ¶¶6-7. We agree with no-merit counsel that the undisputed facts would not have supported a defense that the objective component of adequate provocation had been met. *See* ***id.***, ¶7 ("As to the objective component, the provocation must be such that would cause an ordinary, reasonable person to lack self-control completely[.]"). For similar reasons, we conclude that there is no arguable merit to Quinonez's argument that trial counsel was ineffective for allowing him to plead guilty to first-degree intentional homicide, rather than pursuing a defense at trial challenging the state's ability to prove intent. Additionally, nothing before us would support a non-frivolous argument that counsel fell below a reasonable standard of representation by failing to advise Quinonez to pursue a plea of not guilty by reason of insanity rather than plead guilty. *See* WIS. STAT. § 971.15(1) (defense of not guilty by reason of mental disease or defect requires proof that "as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law").

Finally, nothing before us would support a non-frivolous argument of deficient performance or prejudice in connection with plea negotiations. *See* ***Bentley***, 201 Wis. 2d at 311-17 (claim for plea withdrawal based on ineffective assistance of counsel in connection with defendant's decision to enter a plea must set forth specific facts showing that counsel performed

deficiently and that, absent counsel's deficient performance, the defendant would not have entered the plea). We agree with counsel's assessment that further proceedings on this issue would lack arguable merit.

The no-merit report, Quinonez's response, and the supplemental no-merit report also address whether there would be arguable merit to a challenge to Quinonez's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the severity of the offenses, Quinonez's character, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Quinonez faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (internal citation omitted)). We discern no other basis to challenge the sentence imposed by the circuit court.

Quinonez argues that there would be arguable merit to a motion for sentence modification. Quinonez asserts that he has no prior criminal convictions and that he is a hard worker who provided for his wife and children. Counsel responds that the facts Quinonez has identified were already presented to the sentencing court, and that those facts therefore would not

support a motion for sentence modification. *See* ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975) (new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or … it was unknowingly overlooked by all of the parties"). We agree with counsel's assessment that nothing before us would support a non-frivolous argument for sentence modification.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of Adalberto Quinonez in this matter. *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