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DISTRICT III

October 24, 2023

To:

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Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

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Andres Lara Vasquez 656531
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Green Bay, WI 54307-9033

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

2020AP1296-CRNM State of Wisconsin v. Andres Lara Vasquez
(L. C. No. 2015CF328)

Before Stark, P.J., Hruz and Gill, 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).

Andres Lara Vasquez appeals a judgment convicting him of one count of first-degree reckless injury with the use of a dangerous weapon and two counts of injury by intoxicated use of a vehicle. Vasquez also appeals from the order denying his motion for postconviction relief. His appellate counsel, Jefren E. Olson,¹ has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),² and *Anders v. California*, 386 U.S. 738 (1967). Vasquez received a

¹ Vasquez is now represented by Attorney Colleen Marion.

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

copy of the report, was advised of his right to file a response, and he has responded. Appellate counsel filed a supplemental no-merit report. We have independently reviewed the record, the no-merit report, Vasquez's response, and the supplemental report, as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm. WIS. STAT. RULE 809.21.

On April 6, 2015, the State charged Vasquez with one count of first-degree recklessly endangering safety, two counts of injury by intoxicated use of a vehicle, one count of felony bail jumping, one count of operating without a valid operator's license, and one count of obstructing an officer. The charges stemmed from a traffic accident that occurred on April 2, 2015.

Following further investigation, the State filed an amended complaint adding more charges: one count of attempted first-degree intentional homicide, an additional count of felony bail jumping, and one count of operating a motor vehicle without owner's consent. Those charges stemmed from a separate incident that also occurred on April 2, 2015. According to the complaint, Vasquez got into a fight with Robert,³ the brother of the owner of the vehicle that Vasquez was driving when he caused the traffic accident. According to the police reports attached to the amended complaint, while investigating the motor vehicle incident, police went to Robert's apartment to look for the owner of the vehicle involved in the crash. They found Robert lying on the floor, bloodied and seriously injured. Robert told police that Vasquez attacked him and was trying to kill him. Coincidentally, one of the first responders to the crash scene realized that, shortly before being dispatched to the scene, he had seen Vasquez leaving

³ Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we refer to the victim using a pseudonym.

Robert's apartment in the vehicle Vasquez was driving at the time of the crash. Vasquez initially told police he was too intoxicated to remember what happened in Robert's apartment, though he later said he acted in self-defense.

Vasquez ultimately entered into a plea agreement with the State whereby he would plead guilty to an amended charge of first-degree reckless injury with the use of a dangerous weapon and two counts of injury by intoxicated use of a vehicle. The remaining charges would be dismissed and read in. The State would also dismiss three other pending cases charging disorderly conduct and battery by a prisoner. The circuit court conducted a colloquy with Vasquez, accepted his guilty pleas, and imposed a fifty-year prison sentence consisting of thirty years of initial confinement followed by twenty years of extended supervision. At the sentencing hearing, the State requested additional time to consider restitution. The court and the parties instead agreed to have a calendar call so the parties could advise the court as to how to proceed regarding restitution. There is no record of a calendar call or a hearing addressing restitution; instead, the State submitted a proposed restitution order naming three victims and totaling \$40,435.03. The court signed the order.

Vasquez's first postconviction counsel filed a postconviction motion seeking to withdraw Vasquez's pleas on the grounds that they were not knowing, intelligent, or voluntary. Following a hearing, the postconviction court denied the motion. Vasquez's postconviction counsel subsequently withdrew from representing Vasquez, and Vasquez's new counsel filed a no-merit report. Counsel later asked this court to dismiss the appeal in order to file a postconviction motion challenging the circuit court's restitution order. This court granted the request.

Counsel then filed a second postconviction motion, asking the postconviction court to vacate the restitution order and hold a hearing on the grounds that Vasquez did not stipulate to the restitution amount. The circuit court held a hearing and denied the motion, finding that in light of the facts presented, Vasquez did stipulate to the restitution amount. This no-merit appeal follows.

Appellate counsel's no-merit report addresses the potential issues of whether Vasquez's pleas were valid; whether the circuit court properly exercised its sentencing discretion; and whether any other issues arising from sentencing—specifically, the postconviction court's denial of Vasquez's motion to vacate the restitution order—constitute arguably meritorious issues for appeal.

The plea colloquy, together with the plea questionnaire/waiver of rights form, the jury instructions, and trial counsel's confirmation that he reviewed the elements of the offenses and Vasquez's rights with Vasquez, demonstrate Vasquez's understanding of the information to which he was entitled and that his plea was knowing, voluntary, and intelligent. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

With regard to the circuit court's sentencing decision, our review of the record confirms that the court considered the relevant sentencing objectives and factors. *See State v Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and was not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233

N.W.2d 457 (1975). Accordingly, there would be no arguable merit to a challenge to the circuit court's sentencing discretion.

As to the remaining sentencing issues, particularly the restitution issue, we agree with appellate counsel's recitation of the facts and relevant law. Vasquez challenges the restitution order in his response and alleges ineffective assistance of counsel, but based upon our independent review of the record, we agree with the analysis set forth in appellate counsel's no-merit report and supplemental no-merit report and will not discuss the issues further.

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

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Colleen Marion is relieved of any further representation of Andres Lara Vasquez in this matter. *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