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DISTRICT II

February 19, 2025

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Circuit Court Judge
Electronic Notice

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

2024AP1386-CRNM State of Wisconsin v. Jose A. Miranda (L.C. #2022CF1683)

Before Gundrum, P.J., Grogan and Lazar, 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).

Jose A. Miranda appeals a judgment, entered following his guilty plea, convicting him of possession of child pornography and stalking. He also appeals an order denying postconviction relief. Miranda's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Miranda filed a response, and counsel filed a supplemental no-merit report. After reviewing the record, counsel's reports, and

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Miranda's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, a sixteen-year-old victim said he had sent sexually explicit pictures of himself to a girl he met online, who he knew as "Madelaine." At one point, "Madelaine" left condoms and lubricant for the victim in an employees-only area where he and Miranda both worked. The victim's underwear was stolen on three occasions from his work locker, and, one day, his underwear was returned to his locker with a note from "Madelaine." After the victim blocked "Madelaine" on social media, printouts of the victim's nude pictures began being distributed in the employees-only area. Law enforcement became aware of the situation after one of the victim's hockey teammates received a photo on social media of the victim with his personal information, and that teammate reported it to their coach. The victim's parents contacted police. The complaint described law enforcement's lengthy process of establishing that Miranda pretended to be "Madelaine" and engaged in the stalking behaviors directed at the victim. The State charged Miranda with sexual exploitation of a child, possession of child pornography, stalking, solicitation of sexual intercourse with a child, unauthorized use of an individual's identifying information, and defamation.

Pursuant to a plea agreement, Miranda pled to possession of child pornography and stalking. The remaining charges were dismissed. The circuit court sentenced Miranda to six years of initial confinement and ten years of extended supervision.[2] The court determined

[2] Specifically, the circuit court sentenced Miranda to six years of initial confinement and ten years of extended supervision on the possession-of-child-pornography count. The court sentenced Miranda to a concurrent sentence of eighteen months of initial confinement and two years of extended supervision on the stalking count.

Miranda was statutorily ineligible for the Challenge Incarceration Program ("CIP") and the Substance Abuse Program ("SAP").

Miranda moved for postconviction relief. He argued, in part,[3] that he was statutorily eligible for the CIP and the SAP on the possession-of-child-pornography count, and he asked the circuit court to make him eligible for those programs. Following a hearing, the court denied Miranda eligibility for the SAP because "he has no demonstrated substance abuse issues." The court also denied Miranda eligibility for the CIP; it explained it sentenced Miranda to more than the mandatory minimum because it believed the length of the sentence "was necessary for both deterrence and for punishment." This no-merit appeal follows.

The no-merit report addresses whether the pleas were knowingly, voluntarily, and intelligently entered and whether the circuit court erred at sentencing or the postconviction hearing. We agree with counsel's analysis and conclusion that there is no arguable basis to pursue any of these issues. We comment briefly on these issues.

With regard to the circuit court's plea colloquy, appellate counsel points out that the record fails to clearly establish Miranda's understanding of the three-year mandatory minimum for possessing child pornography. *But see* ***State v. Bangert***, 131 Wis. 2d 246, 262, 389 N.W.2d 12 (1986) (at plea hearing, court must "establish the accused's understanding of … the range of punishment[.]"). However, counsel advises that, based on his investigations outside the record, Miranda could not show he is entitled to plea withdrawal. *See* ***State v. Brown***, 2006 WI 100,

[3] He also moved to correct an error relating to the DNA surcharge on the judgment of conviction. The circuit court granted that part of the motion, and an amended judgment of conviction was entered.

¶39, 293 Wis. 2d 594, 716 N.W.2d 906 (motion for plea withdrawal based on plea colloquy deficiency must "allege that the defendant did not know or understand the information that should have been provided at the plea hearing"). We agree with counsel that there is no arguable merit to seek plea withdrawal on this basis.

The remainder of the circuit court's plea colloquy sufficiently complied with the requirements of ***Brown***, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08 relating to the nature of the charges, the rights Miranda was waiving, and other matters. The record shows no other ground to withdraw the pleas. We therefore agree with counsel's analysis and conclusion that any challenge to the validity of Miranda's pleas would lack arguable merit.

With regard to the circuit court's sentencing discretion, our review of the record confirms that the court appropriately 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. The sentence 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). Therefore, there would be no arguable merit to a challenge to the court's sentencing discretion.

As for the circuit court's denial of Miranda's postconviction motion regarding the CIP and the SAP eligibility, the court had discretion to determine whether Miranda was eligible for these programs and the record reveals the court exercised that discretion to determine he was not eligible. *See* ***State v. Lehman***, 2004 WI App 59, ¶19, 270 Wis. 2d 695, 677 N.W.2d 644. We

agree with counsel that there is no arguably meritorious basis to claim that the court erroneously exercised its discretion in denying the postconviction motion.

Miranda filed a response to the no-merit report. Miranda first generally complains that his trial counsel "failed [him] as [a] lawyer." He complains counsel did not share all the digital discovery with him, did not adequately explain things to compensate for Miranda's learning disability, and ignored him.

In regard to Miranda's learning disability, his trial counsel advised the circuit court that Miranda had a learning disability and when it appeared Miranda did not understand, counsel "was able to immediately clarify, and he seemed to immediately understand[.]" At the plea hearing, Miranda also personally advised the court that he understood everything in the plea-questionnaire-and-waiver-of-rights form, that his counsel reviewed the form with him, and that his counsel was able to answer any questions he had about the form. He advised the court that he completed twelve years of schooling. To establish ineffective assistance of counsel based on his learning disability, Miranda would have to show that counsel's performance fell below an objective standard of reasonableness and that Miranda was prejudiced as a result. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). However, based on counsel's representation and Miranda's statements to the court, there is no issue of arguable merit as to whether counsel was ineffective in regard to Miranda's learning disability.

As for the discovery issue, Miranda was aware of this perceived discovery issue at the time he agreed to plead and yet he still chose to plead to the agreed-upon charges. *See* ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (holding that a defendant who enters a valid guilty plea forfeits the right to challenge alleged non-jurisdictional defects and to

raise defenses to the criminal charge). Further, even assuming trial counsel was deficient in regard to these discovery matters, to prove ineffective assistance of counsel, Miranda must show both that his trial counsel's performance was deficient and the deficient performance prejudiced Miranda. *See* ***Strickland***, 466 U.S. at 687. Miranda does not allege that he would not have pled had trial counsel reviewed all the discovery with him. He does not identify anything exculpatory from the file. There is no arguable merit to a claim that Miranda's trial counsel was ineffective for failing to review all the discovery with Miranda.

Miranda next advises this court he needs to "confess" that "another person was involved in this case"—specifically, "Jerik Scott." He states he was Scott's "accomplice" and Scott "force[d] me to do this." Miranda states he "never told anyone [until] now."

Miranda's counsel filed a supplemental no-merit report advising that Jerik Scott was identified in the police reports in this case. Specifically, "Detective Laura Hoffman determined that the Snapchat account used to communicate with the victim was associated with the email address scottjerick@gmail.com, which had been created using an IP address in the Philippines." Counsel states that because this information was known at the time Miranda pled (both by Miranda personally and as contained in the police report), he therefore cannot present this information as a defense for the first time on appeal. *See* ***Kelty***, 294 Wis. 2d 62, ¶18 n.11. We agree with counsel and conclude there is no issue of arguable merit surrounding Jerik Scott.

Finally, Miranda argues there is an issue of arguable merit because he was not given his ***Miranda***[4] warnings at the time of his arrest. Counsel responds that the police reports do not

[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

reflect that Miranda made a statement after his arrest, so there would be nothing to suppress. ***State v. Armstrong***, 223 Wis. 2d 331, 344-45, 588 N.W.2d 606 ("***Miranda*** warnings need only be administered to individuals who are subjected to a custodial interrogation.").

Counsel also advises that the "only statements attributed to Mr. Miranda in the police reports were made voluntarily, at his place of employment, after being told by police that he was not under arrest." Counsel explains:

> Mr. Miranda could not reasonably argue on appeal that this statement should have been suppressed, or that his attorney was ineffective for failing to seek to suppress it. ***State v. Bartelt***, 2018 WI 16, ¶31, 379 Wis. 2d 588, 906 N.W.2d 684 ("Looking at the totality of the circumstances, courts will consider whether a reasonable person would not feel free to terminate the interview and leave the scene." (internal quotation marks omitted)).

We agree with counsel that there is no issue with arguable merit surrounding ***Miranda*** warnings in this case.

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

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Jose A. Miranda in this appeal. *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