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DISTRICT I

July 22, 2025

To:

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Circuit Court Judge
Electronic Notice

David Malkus
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Luis F. Ortiz Martinez 717230
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Electronic Notice

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

2024AP1553-CRNM State of Wisconsin v. Luis F. Ortiz Martinez (L.C. # 2022CF2243)

Before White, C.J., Geenen, and Colón, 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).

Luis F. Ortiz Martinez appeals from his judgments of conviction entered after he pled no contest to fourth-degree sexual assault and felony intimidation of a witness, and from the orders relating to his postconviction motions. His appellate counsel, Attorney David Malkus, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).¹ Ortiz Martinez was advised of his right to file a response, but he did

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

not do so. Upon this court's independent review of the record as mandated by *Anders*, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

In March 2022, police responded to a call at the home of S.R.E. S.R.E. told police that she had been standing by her bedroom window when her ex-boyfriend, Ortiz Martinez, reached in, pulled her by the hair, and pointed a black and silver handgun at her, accusing her of having sex for money. He then fled.

S.R.E. explained to police that she had been in a romantic and sexual relationship with Ortiz Martinez that started in January 2019, when she was 14 years old and he was 35 years old. She stated that throughout that time, she and Ortiz Martinez had penis to vagina sex approximately 100 times. She said they also sometimes had penis to anus sex, and that she had once engaged in a "threesome" with Ortiz Martinez and an unknown girl when she was 15 years old. She also said that Ortiz Martinez had previously been abusive to her, and that he considered her to be his wife.

Ortiz Martinez was arrested on June 6, 2022. On June 7, 2022, he made a call to S.R.E. from the jail that was recorded, during which he told her "do not step foot out of that house," because "[i]f they find you, they're going to force you to go to court," and "[i]f they don't find you ... they have to let me go."

Ortiz Martinez was charged with repeated sexual assault of a child, disorderly conduct using a dangerous weapon, and felony intimidation of a witness. He ultimately opted to resolve the charges with a plea. Pursuant to the plea negotiations, Ortiz Martinez pled no contest to fourth-degree sexual assault and felony intimidation of a witness, with the disorderly conduct

charge dismissed but read in for sentencing purposes. He was sentenced to 9 months on the sexual assault count, with a consecutive sentence of 56 months of initial confinement followed by 60 months of extended supervision for the intimidation count. The circuit court also imposed the requirement that he register as a sex offender.

Ortiz Martinez filed a postconviction motion seeking to vacate the sex offender registration requirement.² He argued that the circuit court did not make the requisite statutory findings necessary for imposing discretionary sex offender registration, in accordance with WIS. STAT. § 973.048(1m). That statute requires a determination by the court that “the underlying conduct was sexually motivated,” and that “it would be in the interest of public protection” to have the person register as a sex offender. Sec. 973.048(1m)(a).

The circuit court denied the motion to vacate the sex offender registration requirement. The court found that based on the facts set forth in the complaint, as well as those discussed at sentencing, this was “clearly” a sexually motivated offense. It further found that given S.R.E.’s age at the time their “relationship” began, and the number of assaults that occurred throughout that relationship, registration was in the interest of public protection. This no-merit appeal follows.

In the no-merit report, appellate counsel first addresses whether there would be arguable merit to appealing the validity of Ortiz Martinez’s pleas. A plea is not constitutionally valid if it

² In that postconviction motion, Ortiz Martinez also sought to amend his judgments of conviction to correctly reflect that he had pled “no contest” as opposed to “guilty,” and to reflect that the sex offender registration requirement was imposed in conjunction with the sexual assault charge and not the witness intimidation charge. The circuit court granted the motion as it pertained to those requests, and ordered that the judgments of conviction be amended. Ortiz Martinez also filed a supplemental postconviction motion seeking to reallocate his sentence credit, which was granted.

is not knowingly, voluntarily, and intelligently entered. *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). This may be established if the requirements set forth in WIS. STAT. § 971.08 and *Bangert* are not met during the plea colloquy by the circuit court. *State v. Brown*, 2006 WI 100, ¶¶23, 34-35, 293 Wis. 2d 594, 716 N.W.2d 906.

Here, the plea colloquy by the circuit court mostly complied with these requirements, with a few deficiencies. First, appellate counsel points out that the circuit court’s warning regarding deportation deviated from the language of WIS. STAT. § 971.08(1)(c). However, minor deviations from the statutory language do not undermine the validity of the plea. *State v. Mursal*, 2013 WI App 125, ¶20, 351 Wis. 2d 180, 839 N.W.2d 173. Furthermore, before a defendant can seek plea withdrawal based on the failure to comply with § 971.08(1)(c), that defendant must show “that the plea is likely to result in the defendant’s deportation, exclusion from admission to this country or denial of naturalization[.]” Sec. 971.08(2). Counsel represents that he has confirmed that Ortiz Martinez is a United States citizen.

The no-merit report also recognizes that the circuit court did not verify that there had been no promises or threats made to induce Ortiz Martinez to enter the pleas. However, this requirement was acknowledged by Ortiz Martinez on the plea questionnaire and waiver of rights form. Although not a substitute for a colloquy, the plea questionnaire and waiver of rights form “lessen[s] the extent and degree of the colloquy otherwise required between the [circuit] court and the defendant[.]” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation omitted; first alteration in original). Furthermore, counsel represents that, for reasons outside the record, he is unable to allege that a threat or promise induced Ortiz Martinez’s pleas. See *State v. Moederndorfer*, 141 Wis. 2d 823, 829 n.2, 416 N.W.2d 627 (Ct. App. 1987) (stating that this court will not “deem the record to be prima facie defective” for such a colloquy

deficiency unless the defendant “alleges that a threat was actually made”). In the absence of an objection from Ortiz Martinez, we accept this representation by counsel. We therefore agree with counsel’s analysis that there are no issues of arguable merit relating to Ortiz Martinez’s pleas.

The no-merit report also addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Ortiz Martinez. The record reflects that the court properly exercised its discretion in considering proper and relevant sentencing objectives and factors. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Furthermore, Ortiz Martinez’s sentences are within the statutory maximums, and are therefore presumed not to be unduly harsh or unconscionable. See *State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. We therefore agree with appellate counsel’s assessment that there would be no arguable merit to a challenge of Ortiz Martinez’s sentences.

Additionally, the no-merit report concludes that there would be no merit to appealing the circuit court’s denial of Ortiz Martinez’s postconviction motion seeking to vacate the requirement for sex offender registration. The court’s decision and order denying the motion made the requisite findings pursuant to WIS. STAT. § 973.048(1m). We therefore agree with appellate counsel’s conclusion that there would be no arguable merit to a challenge of that decision and order.

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

For all the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Ortiz Martinez 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