

FILED
08-15-2023
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

Appeal No. 2021AP001937 CR

STATE OF WISCONSIN, Plaintiff-Respondent

vs.

JOSE A. AREVALO-VIERA Defendant-Appellant-Petitioner

APPEAL FROM THE JUDGMENT OF CONVICTION AND
SENTENCE ENTERED IN THE MILWAUKEE COUNTY
CIRCUIT COURT, THE HONORABLE JOSEPH R. WALL
PRESIDING.

PETITION FOR REVIEW UNDER RULE 809.32(4)

ZALESKI LAW FIRM
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STATEMENT OF THE CASE

The State charged Arevalo-Viera with the following offenses:

Count 1: First Degree Sexual Assault (Forcibly Aiding And Abetting);

Count 2: Kidnapping (Carries Forcibly)-As A Party To A Crime;

Count 3: First Degree Sexual Assault (Forcibly Aiding And Abetting);

Count 4: First Degree Sexual Assault (Forcibly Aiding And Abetting);

Count 5: First Degree Sexual Assault (Forcibly Aiding And Abetting);

Count 6: First Degree Sexual Assault (Forcibly Aiding And Abetting);¹

Count 7: Armed Robbery As A Party To A Crime. Ap.6-8.²

The case proceeded to a seven day trial during which the jury found Arevalo-Viera guilty on all counts. 83:12-13. At sentencing, the circuit court imposed the following sentences:

Count 1: 40 years initial confinement, 20 years extended supervision;

¹ As to Counts 1,3,4,5 and 6, the circuit court at trial instructed the jury as to Second Degree Sexual Assault as a lesser included offense. 76:9-10. The jury found Arevalo-Viera guilty of such offense on Count 3. 83:13.

² See Third Amended Information. 32:1-3.

Count 2: 20 years initial confinement, 15 years extended supervision;

Count 3: 10 years initial confinement, 10 years extended supervision;

Count 4: 40 years initial confinement, 20 years extended supervision;

Count 5: 40 years initial confinement, 20 years extended supervision;

Count 6: 40 years initial confinement, 20 years extended supervision;

Count 7: 5 years initial confinement, 5 years extended supervision.

55:56-58.³

The circuit court made Counts 1, 3, 4, 5, and 6 concurrent to each other, but consecutive to Counts 2 and 7. 55:57-58. The circuit court made Count 7 consecutive to Count 2. 55:58. The sentences contemplated a 65 year period of initial confinement and a 40 year period of extended supervision. 55:58. Arevalo-Viera timely filed a notice of intent to pursue posconviction relief, 52:1-2, pursuant to which the State Public Defender appointed the undersigned counsel to represent Arevalo-Viera on postconviction matters. By and through counsel, Arevalo-Viera

³ The judgment of conviction erroneously reflects a sentence of 40 years initial confinement/20 years extended supervision on Count 7.

filed a notice of appeal, 200:1. After considering briefs filed by the parties, the court of appeals affirmed. These proceedings follow.

Dated this 15th day of August 2023.

Electronically signed by:

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CERTIFICATION

I hereby certify that this petition meets the form and length requirements of Wis. Stat. Rule 809.19(8)(b) and (c) in that is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 points for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The text is 13 point type and the length of the petition is 866 words.

Dated this 15th day of August 2023.

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Attorney for Defendant-Appellant-Petitioner

CERTIFICATION

I hereby certify that attached to this No Merit Petition for Review is an appendix which contains:

1. The decision and opinion of the court of appeals.
2. The judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition.
3. Any other portions of the record necessary for an understanding of the petition.
4. A copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b).

Dated this 15th day of August 2023.

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CERTIFICATION BY ATTORNEY

I hereby certify that I have discussed with the defendant-appellant-petitioner all potential issues identified by me and by the respondent-appellant-petitioner and the merit of an appeal on these issues, and I have informed the defendant-appellant-petitioner that the respondent-appellant-petitioner must choose one of the following 3 options: 1) to have me file a no-merit petition for review; 2) to have me close the file without an appeal; or 3) to have me close the file and to proceed without an attorney or with another attorney retained at the respondent-appellant's expense. I have informed the defendant-appellant-petitioner that a no-merit petition for review will be filed if the defendant-appellant-petitioner either requests a no-merit petitioner for review or does not consent to have me close the file without further representation. I have informed the defendant-appellant-petitioner that the transcripts and circuit court case record will be forwarded at the defendant-appellant-petitioner's request. I have also informed the defendant-appellant-petitioner that the respondent-appellant-petitioner may file a response to the no-merit petition for review and that I may file a supplemental no-merit petition for review and affidavit or affidavits containing facts outside the record, possibly including confidential information, to rebut allegations made in the defendant-appellant-petitioner's response to the no merit report.

Dated this 15th day of August 2023.

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