



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 I

October 24, 2016

To:

Hon. Rebecca F. Dallet
Circuit Court Judge
Branch 40
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Pamela Moorshead
Assistant State Public Defender
735 N. Water St., Ste 912
Milwaukee, WI 53202-4116

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

Tony Arnold 629272
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2016AP228-CRNM State of Wisconsin v. Tony Arnold (L.C. # 2014CF3618)

Before Kessler, Brennan and Brash, JJ.

Tony Arnold appeals a judgment convicting him of one count of misdemeanor battery and one count of felony strangulation and suffocation, both as acts of domestic abuse. Attorney Pamela Moorshead filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Arnold was informed of his right to file a response, but he has not done so. After considering the no-

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Arnold could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be any basis for arguing that Arnold did not knowingly, intelligently, and voluntarily enter his guilty plea. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08, and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although “not intended to eliminate the need for the court to make a record demonstrating the defendant’s understanding of the particular information contained therein,” the circuit court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing “the extent and degree of the colloquy otherwise required between the trial court and the defendant.” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

During the plea hearing, the prosecutor stated the plea agreement on the record and both Arnold and Arnold’s lawyer agreed that the plea agreement as stated by the prosecutor was accurate; in exchange for Arnold’s guilty plea to the two charges, the remaining counts would be dismissed and read-in for sentencing, with the State recommending prison but leaving the length of time to the circuit court. The circuit court explained to Arnold that it was not required to follow the recommendation of either the prosecutor or Arnold’s lawyer, and could sentence

Arnold up to the maximum term of imprisonment. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Arnold said that he understood. The circuit court also explained to Arnold what it meant when charges were dismissed and read-in for sentencing.

The circuit court explained the elements of the crimes to Arnold on the record and informed him of the maximum penalties he faced by entering a plea. Arnold told the court that he understood. The circuit court personally reviewed with Arnold some of the constitutional rights he was waiving, and ascertained that Arnold had reviewed the plea questionnaire and waiver-of-rights form with his lawyer, which listed all of the constitutional rights Arnold was waiving by entering a plea. The circuit court also ascertained that Arnold understood the form and had discussed it with his lawyer before he signed it.

The circuit court informed Arnold that if he was not a citizen of the United States of America, he could be deported if he pled guilty. *See State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. The circuit court asked Arnold whether he had reviewed the criminal complaint and whether the facts alleged in the complaint could serve as the basis for the plea. Arnold's lawyer informed the court that the parts of the criminal complaint relating to the two charges to which Arnold was entering a plea could serve as a basis for the plea. The circuit court asked Arnold whether he had enough time to review everything with his lawyer, and he said he did. The circuit court also asked Arnold's lawyer whether he was satisfied that Arnold understood all that had been discussed. Arnold's lawyer responded affirmatively. Based on the circuit court's thorough plea colloquy with Arnold, and Arnold's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion when it imposed two years of initial confinement and three years of extended supervision for the strangulation charge and nine-months for the battery charge, to be served concurrently. In framing its sentence, the circuit court said that Arnold's controlling and abusive actions had an extremely damaging effect on the victim. The court noted that Arnold had threatened the victim and her family members and, even though he had no prior record, he had been acting in an abusive manner toward the victim for some time but had escaped consequences for his actions. The circuit court said that prison was necessary to deter Arnold and punish him, so that he realized that he could not escape the consequences of his actions. The circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Pamela Moorshead from further representation of Arnold.

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved from any further representation of Arnold in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals