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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  
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**DISTRICT I**

February 20, 2024

To:

Hon. Jean M. Kies  
Circuit Court Judge  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Annice Kelly  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Danarius B. Radford 711470  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2023AP481-CRNM      State of Wisconsin v. Danarius B. Radford (L.C. # 2021CF839)

Before White, C.J., Donald, P.J., and Colón J.

**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).**

Danarius B. Radford appeals a judgment convicting him of two counts of homicide by negligent operation of a vehicle. Appellate counsel, Annice Kelly, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Radford received a copy of the report, was advised of his right to file a response, and has filed a response. We have independently reviewed the record, the no-merit report, and the response, as

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Radford with two counts of homicide by negligent operation of a vehicle. According to the complaint, on July 20, 2019, Radford was driving close to 100 miles-per-hour in a forty miles-per-hour zone when he crashed into another vehicle, causing the death of the two occupants. Radford ultimately pled guilty to the charges. The circuit court conducted a colloquy with Radford and accepted his guilty pleas. The circuit court sentenced Radford to three years and six months of initial confinement followed by four years of extended supervision on each count, to run consecutively. The circuit court also ordered restitution in the amount of \$23,760.89, to be paid to the victims' families.

Appellate counsel's no-merit report addresses two issues: (1) whether the circuit court properly accepted Radford's guilty pleas; and (2) whether the circuit court erroneously exercised its sentencing discretion.

As to the first issue, a guilty plea must be entered knowingly, intelligently, and voluntarily. *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). The plea colloquy, together with the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instructions, demonstrate Radford's understanding of the information to which he was entitled and that his pleas were entered knowingly, voluntarily, and intelligently. *See id.*, at 266-72; *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

We note that there are two defects in the circuit court's plea colloquy; however, neither presents an arguably meritorious issue for appeal. The circuit court did not specifically review the elements of the charged offenses with Radford. *See State v. Brown*, 2006 WI 100, ¶58, 293

Wis. 2d 594, 716 N.W.2d 906 (providing that the circuit court must establish during the plea colloquy that the defendant understands every element of the crimes to which he or she enters a plea other than not guilty). However, a motion for plea withdrawal based on a defect in the plea colloquy is arguably meritorious only if the defendant can allege that he or she did not know or understand the information that should have been but was not provided at the plea hearing. *See id.*, ¶59. Here, the circuit court confirmed that Radford reviewed the relevant jury instructions with his counsel and that Radford understood the elements of the charged offenses. Radford also initialed each element on the jury instruction form, indicating his understanding.

The circuit court also did not ascertain whether any promises, agreements, or threats were made in connection with Radford's pleas. However, the plea questionnaire and waiver of rights form, signed by Radford, confirm that Radford was neither threatened nor forced to enter the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶30-32, 42, 317 Wis. 2d 161, 765 N.W.2d 794 (explaining that although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken). The circuit court confirmed that Radford signed the plea questionnaire and waiver of rights form after going through it with counsel. We therefore agree with appellate counsel that the record does not suggest there would be an arguable basis to challenge Radford's pleas.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a circuit court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d

76. It must also determine which objective or objectives are of greatest importance. *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court’s discretion. *Id.*

In his response, Radford contends that the circuit court failed to identify its primary sentencing objectives. Radford argues that the circuit court failed to “explicitly” state its objectives, leaving him to “guess the [circuit] court’s intent behind his sentence.” Radford’s response also states that appellate counsel’s no-merit report “conflates the primary factors of sentencing with the primary objectives of Radford’s sentence.” (Emphasis in original.) Our independent review of the sentencing transcript indicates that the circuit court considered both the relevant sentencing factors and objectives.

When reviewing a circuit court’s discretionary sentencing decision, we do not require the use of “magic words.” *State v. Ziller*, 2011 WI App 164, ¶13, 338 Wis. 2d 151, 807 N.W.2d 241. The sentencing court must address the appropriate sentencing factors but need not recite them. *See Odom*, 294 Wis. 2d 844, ¶25.

Although the circuit court did not directly state the sentencing factors, it did consider them. The circuit court considered the need to protect the community, paying particular attention to Radford’s speed and the speeding epidemic in Milwaukee. The circuit court also addressed the need for punishment, stating that “[i]t is a prison case” in light of Radford’s “reckless[ness],” the loss of life it caused, and the effect on the victims’ families. To the extent Radford contends

that the circuit court did not identify the factor of greatest consideration, it is clear from the transcript that the circuit court focused on the need for punishment in light of the gravity of the offense. The circuit court has discretion to determine the depth of consideration to afford a sentencing factor. *State v. Grady*, 2007 WI 81, ¶31, 302 Wis. 2d 80, 734 N.W.2d 364.

In addition to considering the relevant sentencing factors, the circuit court also considered the relevant sentencing objectives. As stated, the circuit court paid special attention to the gravity of the offense, stating that Radford's actions caused two families to lose beloved family members. The circuit court also considered mitigating factors, including Radford's character, but noted that Radford's actions warranted prison terms.

In short, the record suggests that the circuit court considered and applied the relevant sentencing factors. The resulting sentence was within the potential maximum authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is 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, a challenge to the circuit court's sentencing discretion would lack arguable merit.

We note that the no-merit report does not address restitution presumably because the parties stipulated to restitution at the sentencing hearing. Accordingly, there would be no arguable merit to a challenge on this basis.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Annice Kelly is relieved of further representation of Danarius R. Radford in this case pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*