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**DISTRICT II**

September 4, 2013

To:

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Circuit Court Judge  
Fond du Lac County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2013AP668-CRNM      State of Wisconsin v. Randall T. Dudevoire (L.C. # 2010 CF356)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Randall Dudevoire appeals from a judgment convicting him of incest contrary to WIS. STAT. § 944.06 (2007-08).<sup>1</sup> Dudevoire's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Dudevoire received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and

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<sup>1</sup> All subsequent references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Dudevoire's no contest plea was knowingly, voluntarily, and intelligently entered and had a factual basis; (2) whether the circuit court misused its sentencing discretion; and (3) whether the circuit court erred when it denied Dudevoire's motion to suppress DNA test results that linked him to the deceased child born of the incestuous relationship. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his no contest plea, Dudevoire answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Dudevoire's no contest plea was knowingly, voluntarily, and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Dudevoire signed is competent evidence of a knowing and voluntary plea. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). 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 a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Dudevoire's no contest plea.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Dudevoire to the maximum twelve and one-half year term for incest. In fashioning the sentence, the court considered the seriousness of the offense; Dudevoire's poor character, substance abuse, and history of other offenses; and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court also considered that Dudevoire blamed others for his conduct and minimized his responsibility. The court stated reasons for refusing to consider the Challenge Incarceration Program and the Earned Release Program. The felony sentence complied with WIS. STAT. § 973.01 (2007-08) relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

The circuit court required Dudevoire to pay the DNA surcharge under WIS. STAT. § 973.046. At a postconviction motion hearing, the court stated reasons for imposing the surcharge. *State v. Cherry*, 2008 WI App 80, ¶11, 312 Wis. 2d 203, 752 N.W.2d 393. No issue of arguable merit could arise from a challenge to the imposition of the DNA surcharge.

We agree with appellate counsel that there would be no arguable merit to an appeal from the circuit court order denying Dudevoire's motion to suppress the DNA test results that linked him to the deceased child born of the incestuous relationship. The circuit court concluded that the affidavit in support of the search warrant for this material was sufficient. We agree.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for

appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Timothy O'Connell of further representation of Dudevoire in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Timothy O'Connell is relieved of further representation of Randall Dudevoire in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*