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DISTRICT I

December 3, 2013

To:

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

2013AP806-CRNM State of Wisconsin v. Marquis Dontae Carpenter
(L.C. #2011CF102)

Before Curley, P.J., Kessler and Brennan, JJ.

Marquis Dontae Carpenter appeals a judgment convicting him of second-degree recklessly endangering safety.¹ Attorney Kaitlin A. Lamb filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),² and *Anders v.*

¹ Carpenter filed a postconviction motion for additional sentence credit that was granted. Because Carpenter was successful in gaining relief, there are no issues of arguable merit on appeal that pertain to that order.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

California, 386 U.S. 738, 744 (1967). Carpenter was advised that he had a right to respond, but he did not do so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Carpenter 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 Carpenter's no-contest plea was knowingly, intelligently, and voluntarily entered. See WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The circuit court asked Carpenter whether he had gone over the elements of the charge against him with his attorney, and Carpenter informed the circuit court that he had. The circuit court then briefly addressed with Carpenter what the elements of the charge were, and Carpenter acknowledged that he understood. The circuit court informed Carpenter of the potential maximum prison term he faced. Carpenter informed the circuit court that he understood. The circuit court asked Carpenter whether he knew the constitutional rights he was waiving by entering the plea, which were listed on the plea questionnaire and waiver-of-rights form that Carpenter had signed, and Carpenter informed the circuit court that he did. See *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court summarized some of the constitutional rights Carpenter was waiving on the record, and Carpenter again acknowledged that he understood. The circuit court informed Carpenter that he could be deported after conviction if he was not a U.S. citizen. Carpenter told the circuit court he understood. Carpenter agreed that the circuit court could use the facts alleged in the complaint as a factual basis for the plea. The circuit court also informed Carpenter that it would make a finding of guilt if it accepted Carpenter's no-contest plea. Carpenter's attorney acknowledged that Carpenter understood this information. In light of these

circumstances, there would be no arguable merit to an appellate argument that the plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Carpenter to six years and six months of imprisonment, with three years of initial confinement and three years and six months of extended supervision. In framing its sentence, the circuit court considered aggravating factors, like the seriousness of the victim's injury and Carpenter's history of legal infractions, including vandalism, traffic tickets and some misdemeanors, but no felonies. The circuit court also considered mitigating factors, like Carpenter's family support, his good work history, and the fact that he had taken college courses. The circuit court also considered as mitigating the fact that the victim had initially been the aggressor by breaking into Carpenter's home, Carpenter was very frightened by the victim's actions and might have attempted to argue self-defense, but instead chose to take responsibility for shooting the victim in the stomach rather than retreating from the situation. The circuit court noted that Carpenter could have handled the situation differently and needed to address his anger issues. The circuit court explained its application of the various sentencing considerations 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 a challenge to the sentence on appeal.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment, and relieve Attorney Kaitlin A. Lamb of further representation of Carpenter.

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 Kaitlin A. Lamb is relieved of any further representation of Carpenter in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals