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**DISTRICT II/III**

December 17, 2013

To:

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

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2013AP900-CRNM      State of Wisconsin v. Franklin D. Turcios (L.C. #2010CF409)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Franklin Turcios has filed a no-merit report concluding there is no basis to challenge Turcios' conviction for first-degree reckless injury by use of a dangerous weapon. Turcios was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised and summarily affirm.

Turcios and another individual came to the front door of the home of Wilfredo Ayala-Gomez, and Turcios stabbed Ayala-Gomez two times in the abdomen after a disagreement about

the price of a “kick-box” speaker Ayala-Gomez sold Turcios but for which he had not been paid. Turcios was charged with attempted first-degree intentional homicide by use of a dangerous weapon, as party to a crime. In exchange for a guilty plea, the State agreed to amend the charge to first-degree reckless injury by use of a dangerous weapon. The circuit court imposed a sentence of eight years’ initial confinement and five years’ extended supervision.

There is no manifest injustice upon which Turcios could withdraw his guilty plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court’s plea colloquy, together with the plea questionnaire and waiver of rights form, informed Turcios of the constitutional rights he waived by pleading guilty, the elements of the offense and the potential penalty. An adequate factual basis supported the conviction. The court specifically advised Turcios that it was not bound by the parties’ agreement and could impose the maximum penalty. The record shows the plea was knowingly, intelligently and voluntarily entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 265-66.

The record also discloses no basis for challenging the court’s sentencing discretion. The court considered Turcios’ character, the seriousness of the offense and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court stated Turcios “crossed that thin line and went to physical violence with a combination of rage and alcohol with the motivation for revenge. And there is no room for revenge in our society.” The sentence imposed was less than recommended by the State, allowable by law, and therefore presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other issues of arguable merit.  
Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21  
(2011-12).

IT IS FURTHER ORDERED that attorney Russell Bohach is relieved of further  
representing Turcios in this matter.

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