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

2013AP1825-CRNM State of Wisconsin v. Xay Vang (L.C. #2011CF1376)

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

Xay Vang appeals a judgment convicting him of two counts of manufacturing/delivering designer drugs, between ten and fifty grams, and one count of manufacturing/delivering designer drugs, more than fifty grams, all as a party to a crime. He also appeals an order denying his postconviction motion to modify his sentence. Attorney Timothy T. O'Connell filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),¹ and

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Anders v. California, 386 U.S. 738, 744 (1967). Vang 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 Vang could raise on appeal. Therefore, we summarily affirm the judgment of conviction and order denying postconviction relief. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Vang'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 terms of the plea agreement were stated on the record and Vang personally told the circuit court he agreed that the terms of the plea agreement had been accurately set forth. The circuit court asked Vang whether he had completed the plea questionnaire and waiver-of-rights form and whether he went over the form with his attorney. Vang informed the circuit court that he had reviewed the form with his attorney and that his attorney had explained everything on the form to him in a way that he could understand. The circuit court explained to Vang that it is not bound to accept the recommendations made pursuant to the plea agreement and he could sentence Vang up to the maximum penalties, and Vang said that he understood.

The circuit court asked Vang whether his attorney had explained to him each of the elements of the crimes that the State would have to prove beyond a reasonable doubt before he could be convicted, and Vang said that the information had been explained to him. Vang also said that his attorney had explained to him what it meant to be charged and convicted as a party to a crime. The elements of the crimes and the elements of party-to-a-crime liability were attached to the plea questionnaire form, which Vang acknowledged reviewing with his attorney. The circuit court reviewed the maximum penalties Vang could receive for each of the charges,

and Vang said that he understood. The maximum penalties were also listed on the plea questionnaire that Vang signed. The circuit court asked Vang whether his attorney explained all of the constitutional rights he was waiving by entering the plea, which were listed on the plea questionnaire and waiver-of-rights form that Vang had signed, and Vang informed the circuit court that his attorney had explained those rights to him.

The circuit court informed Vang that he could be deported after conviction if he was not a U.S. citizen. Vang told the circuit court he understood. Vang 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 Vang that it would make a finding of guilt if it accepted Vang's plea. Vang acknowledged that he understood this information. The plea questionnaire also explained that if the trial court accepted Vang's plea, the trial court would find him guilty, and Vang signed the document indicating that he had read and understood it. 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 Vang to seven years of imprisonment on the first count, with two years of initial confinement and five years of extended supervision, to seven years of imprisonment on the second count, with two years of initial confinement and five years of extended supervision, and thirteen years of extended supervision on the third count, with three years of initial confinement and ten years of extended supervision, all to be served consecutively. In framing its sentence, the circuit court considered mitigating factors, like Vang's remorse and his cooperation with the prosecution, and aggravating factors, like Vang's serious prior record. The circuit court noted that the community was harmed by drug dealers

selling illegal substances and noted that Vang had a significant role in the drug ring. 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.

Although not explicitly addressed by the no-merit report, we have carefully reviewed Vang's postconviction motion arguing for sentence modification, the transcript of postconviction proceedings and the circuit court's order granting the motion in part and denying it in part. The circuit court changed its restitution order pertaining to the drug "buy" money to an order for reimbursement to the State, joint and several with the other co-defendants, but refused to modify the sentence because the Department of Corrections had concluded that Vang was not eligible for Earned Release Program or the Challenge Incarceration Program. The circuit court explained that Vang was not entitled to sentence modification because whether he was eligible for the programs was not highly relevant to the sentence it imposed. The circuit court also explained that Vang might still be found eligible if he expressed a need for drug treatment. There would be no arguable merit to a challenge to any aspect of the postconviction proceedings.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction and order denying the motion to modify Vang's sentence. Therefore, we affirm the judgment and order, and relieve Attorney Timothy T. O'Connell of further representation of Vang.

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.
See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved of any further representation of Vang in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals