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**DISTRICT III**

March 25, 2014

To:

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

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2013AP1356-CRNM      State v. Randolph E. White (L. C. No. 2012CF18)

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

Counsel for Randolph White has filed a no-merit report concluding no grounds exist to challenge White's convictions for operating while intoxicated, eighth offense, and cocaine possession as a second or subsequent offense. White was informed of his right to file a response to the no-merit report 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 on appeal.

A second amended information charged White with operating while intoxicated, eighth offense; party to the crime of possession with intent to deliver five grams or less of cocaine; cocaine possession as a second or subsequent offense; possession of drug paraphernalia; and operating with a prohibited alcohol concentration, eighth offense. In exchange for his no contest pleas to OWI-eighth and cocaine possession, the State agreed to dismiss and read in the remaining charges. The court imposed maximum consecutive sentences totaling thirteen and one-half years, consisting of six and one-half years' initial confinement and seven years' extended supervision.<sup>1</sup>

The court's plea colloquy, supplemented by a plea questionnaire and waiver of rights form that White completed, informed White of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering no contest pleas. The court confirmed White's understanding that it was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also found that a sufficient factual basis existed in the criminal complaint to support White's pleas. The record shows the pleas were knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The circuit court failed to personally advise White of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). A potential issue would arise if White could

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<sup>1</sup> The record shows White was charged and convicted upon his no contest pleas of OWI-eighth and cocaine possession. Although the judgment of conviction properly indicates that White was convicted of cocaine possession, the judgment adds a "party to a crime" designation to his OWI conviction. Further, the judgment of conviction indicates White was convicted after entering "Not Guilty" pleas. Because these appear to be clerical errors, upon remittitur, the court shall enter an amended judgment of conviction removing the "party to a crime" designation and correctly describing White's pleas as "No Contest."

show that the pleas are likely to result in his “deportation, exclusion from admission to this country or denial of naturalization.” See WIS. STAT. § 971.08(2); see also *State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. White confirmed during the plea colloquy, however, that he is a citizen of the United States. Because White is not subject to deportation, any challenge to the pleas on this basis would lack arguable merit.

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offenses; White’s character, including his lengthy criminal history; the need to protect the public; and the mitigating factors White raised. See *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that White’s sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is modified and, as modified, affirmed pursuant to WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Ellen J. Krahn<sup>2</sup> is relieved of further representing White in this matter. *See* WIS. STAT. RULE 809.32(3) (2011-12).

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

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<sup>2</sup> Although the no-merit report was filed by attorney Andrew R. Hinkel, attorney Ellen J. Krahn subsequently filed a substitution of counsel.