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DISTRICT I

March 25, 2014

To:

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

2013AP1920-CRNM State of Wisconsin v. Jose Ivan Marrero (L.C. #2012CF5543)

Before Fine, Kessler and Brennan, JJ.

Jose Ivan Marrero appeals a judgment convicting him of one count of operating while intoxicated as a sixth offense. Scott D. Connors, Esq., filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738, 744 (1967). Marrero was informed of his right to file a response, but he has not done so. After considering the no-merit report, and after conducting an independent review of the Record, we conclude that there are no issues of arguable merit that Marrero 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 there is a basis to withdraw Marrero's guilty plea. The plea complied in all respects with the mandates of WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266–272, 389 N.W.2d 12, 16 (1986). The circuit court informed Marrero of the potential maximum prison term and other penalties he faced. The circuit court reviewed the elements of the charge with Marrero, explaining what the State would have to prove to convict him. The circuit court reviewed the constitutional rights Marrero would be waiving by pleading guilty. Marrero said that he understood all of the information the circuit court had reviewed with him. Moreover, the circuit court asked Marrero whether he had discussed with his lawyer the information on the plea questionnaire and waiver-of-rights form that he signed, and Marrero said that he had reviewed the information and understood it. The form and attached addendum listed the charges, the constitutional rights Marrero was waiving by entering the plea, the potential penalties and the elements of the crimes. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827–828, 416 N.W.2d 629–630 (Ct. App. 1987).

During the plea colloquy, the circuit court also informed Marrero that he could be deported after conviction if he was not a U.S. citizen. Marrero told the circuit court he understood. Marrero agreed that the facts alleged in the complaint were true and could be used as a factual basis for the plea. The plea agreement was recited on the record, and both Marrero and his attorney told the circuit court that the agreement as recited was in accord with their understanding. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 399, 683 N.W.2d 14, 24. The circuit court informed Marrero that it was not bound to accept the recommendation of his attorney or the district attorney and could impose whatever sentence it thought was appropriate. Marrero said that he understood. Based on the circuit court's thorough plea colloquy, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion when it suspended his license for two years, imposed four years of imprisonment, with two years of initial confinement and two years of extended supervision, and fined him \$1800. The circuit court considered both aggravating factors and mitigating factors in framing its sentence, discussing with Marrero his efforts to maintain sobriety and telling him that the bottom line was that if Marrero was unable to stop drinking, he had to be put in prison because he posed a serious threat to other people. The circuit court also said that the circumstances of the offenses were very serious because Marrero was driving very fast and hit another car, which could have caused serious injury to the other driver. 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, 556–557, 678 N.W.2d 197, 207–208. Therefore, there would be no arguable merit to a challenge to the sentence on appeal.

Our independent review of the Record reveals no other potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Scott D. Connors, Esq., of further representation of Marrero in this matter

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

IT IS FURTHER ORDERED that Scott D. Connors, Esq., is relieved of any further representation of Jose Ivan Marrero in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals