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DISTRICT I

April 1, 2014

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

2013AP1579-CRNM State of Wisconsin v. Michael Hamberlin (L.C. #2012CF2873)

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

Michael Hamberlin appeals a judgment convicting him of one count of possession of cocaine with intent to deliver, between fifteen and forty grams, one count of possession of cocaine with intent to deliver, between five and fifteen grams, and one count of possession of THC with intent to deliver, between 200 and 1000 grams. Thomas K. Voss, 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). Hamberlin filed a response. After considering the no-merit report and the response, and after conducting an independent review of the Record, we conclude that there are no issues of arguable merit that Hamberlin 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 Hamberlin'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, 22–25 (1986). The circuit court informed Hamberlin of the potential maximum prison term and other penalties he faced for each charge. The circuit court reviewed the elements of each charge with Hamberlin, explaining what the State would have to prove to convict him. The circuit court reviewed the constitutional rights Hamberlin would be waiving by pleading guilty. Hamberlin said that he understood all of the information the circuit court had reviewed with him. Moreover, the circuit court asked Hamberlin whether he had discussed with his lawyer the information on the plea questionnaire and waiver-of-rights form that he signed, and Hamberlin said that he had reviewed the information and understood it. The form and attached addendum listed the charges, the constitutional rights Hamberlin 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 627, 629–630 (Ct. App. 1987).

During the plea colloquy, the circuit court also informed Hamberlin that he could be deported after conviction if he was not a United States citizen. Hamberlin told the circuit court he understood. Hamberlin 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 Hamberlin 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 Hamberlin 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. Hamberlin 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 discretion when it sentenced Hamberlin to ten years of imprisonment on the first count, with five years of initial confinement and five years of extended supervision, eight years on the second count, with four years of initial confinement and four years of extended supervision, to be served concurrently, and two years on the third count, with one year of initial confinement and one year of extended supervision, to be served concurrently. The circuit court's main considerations were the seriousness of the offenses, the protection of the public and Hamberlin's need for rehabilitation. In framing its sentence, the circuit court also placed great weight on the harm to the community in general from drugs and Hamberlin's role through his criminal activity in making the problem worse. 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, 556–560, 678 N.W.2d 197, 207–208. Therefore, there would be no arguable merit to a challenge to the sentence on appeal.

The no-merit report next addresses whether there would be arguable merit to a motion for sentence modification. Hamberlin's appellate lawyer states that he is not aware of any factor that would serve as a basis to move to modify Hamberlin's sentence, and our review of the Record

does not reveal a basis to modify Hamberlin's sentence. There would be no arguable merit to this claim.

In his response, Hamberlin argues that the police violated his right to be free from unreasonable searches and seizures under the Fourth Amendment when they stopped his car based on the tip of an unreliable informant. Hamberlin contends that the informant was unreliable because the informant wrongly told the police he had a gun in the car and the informant did not know what type of drugs he was transporting. Hamberlin also argues that he has an eyewitness who would help prove his claim that the police department acted illegally in searching his home and seizing evidence without a search warrant. These arguments may not be raised on appeal because Hamberlin waived his right to raise them when he entered his guilty plea. A guilty or no-contest plea waives all non-jurisdictional defects and defenses, including any claims that a defendant's constitutional rights have been violated. *See State v. Kazee*, 192 Wis. 2d 213, 219, 531 N.W.2d 332, 334 (Ct. App. 1995). Moreover, the circuit court explicitly told Hamberlin during the plea colloquy that he would be giving up his right to argue that evidence should be suppressed if he entered a plea, and Hamberlin told the circuit court that he understood. There would be no arguable merit to an appellate challenge to the actions of the police based on purported violations under the Fourth Amendment.

We have carefully reviewed the entire Record but find no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Thomas K. Voss, Esq., of further representation of Hamberlin.

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

IT IS FURTHER ORDERED that Thomas K. Voss, Esq., is relieved of any further representation of Michael Hamberlin in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*