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DISTRICT I

April 9, 2014

To:

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

2013AP2618-CRNM State of Wisconsin v. Antonio J. Coleman (L.C. #2012CF4134)

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

Antonio J. Coleman appeals a judgment convicting him of one count of armed robbery with use of force, as a party to a crime.¹ Attorney Hannah Blair Schieber filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),² and *Anders*

¹ The Honorable David A. Hansher presided over this case through the plea hearing. The Honorable Michael D. Goulee presided over the sentencing hearing. The Honorable Timothy M. Witkowiak presided over postconviction proceedings.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

v. California, 386 U.S. 738, 744 (1967). Coleman 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 Coleman could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.³

The no-merit report first addresses whether there is a basis to withdraw Coleman’s guilty plea. At a plea hearing, the circuit court has the duty to address a defendant personally to determine that the defendant understands the nature of the charge, the potential maximum penalties, the constitutional rights the defendant is waiving by entering a plea and other factors that help establish that the plea is knowingly, intelligently and voluntarily entered. *See* WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although “not intended to eliminate the need for the court to make a record demonstrating the defendant’s understanding of the particular information contained therein,” the circuit court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing “the extent and degree of the colloquy otherwise required between the trial court and the defendant.” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation mark omitted).

The circuit court informed Coleman of the potential maximum prison term and other penalties he faced. The circuit court reviewed the constitutional rights Coleman would be

³ Before filing this no-merit appeal, Coleman moved to vacate the DNA surcharge and remove language from the judgment of conviction that incorrectly stated that the sentence was imposed “consecutive to any other sentence.” The circuit court granted the motion, amending the judgment of conviction and vacating the DNA surcharge on November 19, 2013.

waiving by pleading guilty. Coleman said that he understood all of the information the circuit court had reviewed with him. Although the circuit court did not personally explain the elements of the charge to Coleman, it asked him whether he had reviewed the information on the plea questionnaire and waiver-of-rights form with his lawyer and whether he understood it. The form listed the elements of the crime in an addendum, was signed by both Coleman and his lawyer, and included a handwritten note stating that the form had been read to Coleman by his lawyer. Coleman told the circuit court he reviewed the form and understood the information it contained.

Coleman stipulated that the facts alleged in the complaint could be used as a factual basis for the plea. The plea agreement was recited on the record, and both Coleman and his lawyer 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, 683 N.W.2d 14. The circuit court informed Coleman 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. Coleman said that he understood. The circuit court also informed Coleman that he was giving up his right to bring suppression motions and other claims and defenses. Coleman told the circuit court that he understood. Based on the circuit court's thorough plea colloquy and the plea questionnaire and waiver-of-rights form, 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 imposed eight years of imprisonment, with five years of initial confinement and three years of extended supervision. The circuit court also made Coleman eligible for both the Earned Release Program and the Challenge Incarceration Program after he served two years of initial confinement. The circuit court explained its sentence at great length, taking pains to use simple language because Coleman has

a very mild form of cognitive impairment. The circuit court considered both aggravating factors and mitigating factors in framing its sentence, explaining that Coleman was going to be sent to prison for a period of time because he had been involved in an armed robbery in the victim's home and, even if he was not the instigator behind the crime, he needed to be punished. 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.

Our independent review of the record reveals no other potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Attorney Hannah Blair Schieber of further representation of Coleman 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 Attorney Hannah Blair Schieber is relieved of any further representation of Coleman in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals