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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:

2013AP2800-CRNM State of Wisconsin v. Jermil Mario Garrett (L.C. #2012CF2728)

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

Jermil Mario Garrett appeals a judgment convicting him of being a felon in possession of a firearm. Attorney Randall E. Paulson filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Garrett was informed of his right to file a response, but he has not done so. After considering the no-merit report and conducting an independent review of the record, we

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

conclude that there are no issues of arguable merit that Garrett could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.[2]

The no-merit report first addresses whether Garrett's guilty plea was knowingly, voluntarily, and intelligently entered. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *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 marks omitted).

During the plea hearing, the prosecutor stated the plea agreement on the record: the repeater enhancer was dropped as to count one, felon in possession of a firearm, and count two, resisting an officer, was dismissed, but read into the record. Both sides were free under the plea agreement to argue for the sentence they thought was appropriate. Garrett told the circuit court

[2] The circuit court amended the judgment of conviction on January 15, 2013, to state that Garrett is eligible for the substance abuse program, otherwise known as the Challenge Incarceration Program, after six months. An appeal has not been taken from that order.

that the agreement as recited was in accord with his understanding. *See* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court informed Garrett that it was not bound to accept the recommendation of his attorney or the district attorney despite the plea agreement, and Garrett said that he understood.

The circuit court ascertained that Garrett was not taking any medication or drinking alcohol that would impair his ability to understand the proceedings. The circuit court informed Garrett that if he was not a citizen, he could be deported as a result of the conviction. The circuit court also informed Garrett that he was giving up his right to bring suppression motions, and other claims and defenses. Garrett told the circuit court that he understood. Moreover, Garrett was aware that he was giving up his right to move to suppress evidence because at the beginning of a suppression hearing several weeks before the plea hearing, Garrett decided to forego his motion and enter a plea. At that point, the circuit court also questioned Garrett about his decision to ensure that Garrett understood that he would not later be able to raise his suppression claim if he did not pursue it at the hearing, particularly because the witnesses were already present to testify.

The circuit court informed Garrett of the potential maximum prison term and other penalties he faced and the elements of the crime. Garrett said that he understood the information the circuit court had reviewed with him. The circuit court asked Garrett whether he had read, understood, and signed the information on the plea questionnaire and waiver-of-rights form with his lawyer, which included the constitutional and other rights he was waiving by entering a plea, the penalties for the crime, and the elements of the crime in an addendum. Garrett told the circuit court he reviewed the form and understood the information on the form, which both he and his lawyer signed. The circuit court also personally reviewed some of the constitutional

rights that Garrett was waiving to illustrate what it meant to give up the right to have a trial. Garrett agreed that the facts alleged in the complaint were true and could serve as a basis for the plea. 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 discretion when it sentenced Garrett to four years and six months of imprisonment, with two years of initial confinement and two years of extended supervision. The circuit court also made Garrett eligible for the Challenge Incarceration Program after six months.

During its sentencing comments, the circuit court discussed at some length whether Garrett and his co-defendant, Robert Thomas Hunt, were planning on committing a robbery when the police apprehended them walking down the street with concealed weapons. Text messages on Hunt's phone suggested he was planning to commit a robbery. The State argued that Garrett was in on the scheme and thus deserved a stiff sentence. Garrett's lawyer argued that Garrett had finished his second shift at the metal foundry where he worked shortly before he was arrested and had nothing to do with the plan. Garrett's lawyer argued that he should be given probation. The circuit court noted that Garrett's prior record was relatively minor; he had a 2007 conviction for uttering, and was placed on probation, which he successfully completed. Stating that it did not know which version of events was true, the circuit court explained that it was reluctant to put a man with five children in prison, especially given Garrett's many achievements in life. The circuit court concluded that this case fell in an intermediate range of severity, and imposed a two-year term of initial confinement, a lighter sentence than recommended by the State, but not probation as requested by Garrett. The circuit court explained its application of the various sentencing considerations in depth 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, and its decision was a reasonable exercise of discretion in light of the circumstances presented. Therefore, there would be no arguable merit to a challenge to the sentence on appeal.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Randall E. Paulson of further representation of Garrett.

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 Randall E. Paulson is relieved of any further representation of Garrett in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals