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**DISTRICT I**

May 8, 2014

To:

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

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2013AP2714-CRNM      State of Wisconsin v. Alonzo Lockett (L.C. #2012CF808)

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

Alonzo Lockett appeals a judgment convicting him of first-degree reckless homicide, with use of a dangerous weapon. Attorney George Tauscheck filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),<sup>1</sup> and *Anders v.*

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

*California*, 386 U.S. 738, 744 (1967). Lockett was informed of his right to file a response, but he has not responded. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Lockett could raise on appeal. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.<sup>2</sup>

The no-merit report first addresses whether Lockett's guilty plea was knowingly, voluntarily, and intelligently entered. In order to ensure that a defendant is knowingly, voluntarily, and intelligently 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 crime 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).

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<sup>2</sup> The circuit court granted Lockett's motion for postconviction relief, vacating the DNA surcharge it imposed on him. See *State v. Cherry*, 2008 WI App 80, 312 Wis. 2d 203, 752 N.W.2d 393. No appeal has been taken from that order.

At the plea hearing, the prosecutor stated the plea agreement on the record: Luckett agreed to plead guilty in exchange for a reduced charge of first-degree reckless homicide with use of a dangerous weapon and the State's recommendation of thirty years of initial confinement and ten years of extended supervision. Luckett's 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 Luckett that it was not bound to accept the recommendation of the district attorney and could sentence him to more time, or less time, than the lawyers requested. Luckett said that he understood.

The circuit court informed Luckett that he was giving up certain constitutional rights by pleading guilty, and reviewed those rights with Luckett, who said that he understood. The circuit court informed Luckett of the potential maximum prison term and other penalties he faced and Luckett said that he understood the information. The circuit court asked Luckett's lawyer whether he had reviewed the elements of the crime with Luckett, and both Luckett and his lawyer said that they had discussed the elements of the crime. The circuit court also asked Luckett whether he had reviewed the plea questionnaire and waiver-of-rights form with his lawyer, and whether he understood it and signed it. Luckett said that he did. The form listed the constitutional and other rights Luckett was waiving by entering a plea, the penalties for the crime, and the elements of the crime.

Luckett informed the court that he was nineteen years old and had completed nine years of school. The circuit court asked Luckett if he was taking any medication that would impair his ability to understand the proceedings. Luckett indicated that he had taken Risperdal for his mental illness, bi-polar disorder, but that the drug assisted in his ability to understand the proceedings, rather than impeding his ability to understand. The circuit court informed Luckett

that if he was not a citizen, he could be deported as a result of the conviction. Lockett stipulated 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 Lockett to thirty-eight years of imprisonment, with twenty-six years of initial confinement and twelve years of extended supervision. During its sentencing comments, the circuit court considered the primary sentencing factors: the gravity of the offense, Lockett's character, and the need to protect the public. The circuit court said that the crime was extremely serious, referring to it as an "absolutely outrageous, brazen, callous, devoid of morals homicide" that occurred in broad daylight on a busy street. The circuit court said that Lockett needed to be incarcerated for a long time both to punish him for his crimes and to send a message to the community that these actions would not be tolerated. 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.

Although the no-merit report did not address in great depth Lockett's mental illness and its impact on the proceedings, we have considered whether there would be arguable merit to an appellate challenge based on Lockett's mental illness and its potential ramifications for his conviction. Lockett's lawyer asked that Lockett be examined to assess the viability of a plea of not guilty by reason of mental disease or defect. Dr. Brooke Lundbohm, a psychologist,

conducted the evaluation and filed a report stating that she was unable to support Lockett's request for the special plea. She explained that although Lockett complained of auditory hallucinations, she had concerns about the validity of his self-reporting. His description of the voices was not typical of reports usually found in the clinical population. For example, he said that the voices never stopped talking and he denied having any strategies for coping with the distress they cause him. He also did not appear distracted or preoccupied by internal stimuli. Dr. Lundbohm's report also noted that Lockett acted rationally after the crime, taking steps to avoid being caught, like running away and concealing the gun. At the hearing where the psychologist's report was reviewed, Lockett's lawyer withdrew the request to enter the special plea. The circuit court conducted a colloquy with Lockett, asking whether he understood that the report did not support his request to enter a plea of not guilty by reason of mental disease or defect. Lockett acknowledged that he had talked to his lawyer about the report, he did not challenge its conclusion, and he understood that his lawyer was asking that the special plea be withdrawn. Because the plea was not supported by the report, Lockett acquiesced in withdrawing the special plea, and the record does not support a claim that Lockett's mental illness impeded his ability to understand the proceedings, there would be no arguable merit to an appellate challenge based on Lockett's mental illness.

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

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 George M. Tauscheck is relieved of any further representation of Lockett in this matter. *See* WIS. STAT. RULE 809.32(3).

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