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**DISTRICT I**

May 16, 2014

To:

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Safety Building Courtroom, # 502  
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You are hereby notified that the Court has entered the following opinion and order:

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2014AP302-CRNM      State of Wisconsin v. Arlo E. Enoch (L.C. #2010CF44)

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

Arlo E. Enoch appeals a judgment convicting him of two counts of homicide by intoxicated use of a vehicle and one count of fleeing an officer, resulting in death. Attorney Hannah B. Schieber 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. California*, 386 U.S. 738, 744 (1967). Enoch was advised of his right to respond to the report, but he has not done so. After considering the no-

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

merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.<sup>2</sup>

The no-merit report first addresses whether Enoch's no-contest 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).

The prosecutor stated the plea bargain on the record: Enoch agreed to plead no contest or guilty in exchange for the State dismissing two charges against him and recommending no more than seventeen years of initial confinement on all of the charges. Enoch's lawyer told the circuit

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<sup>2</sup> Enoch filed two prior postconviction motions. He first moved for three additional days of sentence credit. The circuit court granted the motion. Next, he moved to vacate the DNA surcharge imposed on him. The circuit court also granted that motion.

court that the agreement as recited by the prosecutor was correct. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court informed Enoch that it was not bound to accept the sentencing recommendation of the prosecutor and could sentence him to the maximum if it felt that was appropriate. Enoch said that he understood.

Enoch informed the court that he intended to plead no contest, so the circuit court explained the differences between a guilty and no-contest plea, and questioned Enoch to ensure that he understood. The circuit court reviewed the elements of each crime with Enoch, explaining that each count of homicide by intoxicated use of a vehicle pertained to a different victim. Enoch said that he understood. The circuit court reviewed the maximum potential penalties with Enoch. The circuit court informed Enoch that he was giving up certain constitutional rights by pleading no contest, and reviewed some of those rights with Enoch, who said that he understood. The circuit court asked Enoch whether his attorney had reviewed the plea questionnaire and waiver-of-rights form with him and explained it. Enoch said she had. The circuit court also asked Enoch whether he had signed the form after his lawyer explained it. Enoch said that he did. The form and attached addendum listed the constitutional and other rights Enoch was waiving by entering the plea, the penalties for the crimes and the elements of the crimes.

In response to the circuit court's questions, Enoch informed the circuit court that he had a high school diploma and had not had any alcohol, medicines or drugs in the past twenty-four hours. The circuit court asked Enoch whether he was being treated for mental illness and he said he was not. The circuit court informed Enoch that if he was not a citizen, he could be deported as a result of the conviction as required by WIS. STAT. § 971.08(1)(c). The circuit court also asked Enoch whether he had enough time to talk to his lawyer about everything and took a brief

recess to ensure that Enoch had time to thoroughly review all matters with his lawyer. Enoch agreed that the facts alleged in the complaint could serve as a basis for the plea, with the exception that he did not concede that he had stolen the car that he was driving when the crash occurred. The circuit court accepted these facts as a basis for the plea. 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 Enoch to eighteen years of imprisonment for each count of homicide by intoxicated use of a vehicle, with thirteen years of initial confinement and five years of extended supervision, to be served concurrently, and nine years of imprisonment for fleeing an officer, causing death, with five years of initial confinement and four years of extended supervision, to be served consecutively to the homicide convictions. During its sentencing comments, the circuit court considered the protection of the community, punishment of the defendant, rehabilitation of the defendant and deterrence to others. The circuit court heard from many family members of the victims and from Enoch's family members. The circuit court recognized the tremendous loss to the victim's families, including children of one of the victims. The circuit court stated that it was aware that Enoch, who was eighteen years old when the crash occurred, did not intend to kill the victims and was also aware that teenagers were more impulsive than adults. But the circuit court also stated that the crimes were aggravated by the fact that Enoch's blood alcohol level was substantially over the legal limit for driving, even though he was too young to legally drink alcohol, and by the fact that Enoch was on probation when the crash occurred. The circuit court noted that Enoch had a juvenile record and an adult conviction for theft. The circuit court pointed out that Enoch's story about what had

happened, which placed blame in part on his front seat passenger, was not credible. 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 potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Attorney Hannah B. Schieber of further representation of Enoch in this matter.

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

IT IS FURTHER ORDERED that Attorney Hannah B. Schieber is relieved of any further representation of Enoch in this matter. *See* WIS. STAT. RULE 809.32(3).

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