OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 9, 2014

To:

Hon. Daniel J. Bissett
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Melissa M. Konrad
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Christian A. Gossett
District Attorney
P. O. Box 2808
Oshkosh, WI 54903-2808

Chad R. Thomas
Chad R. Thomas, Attorney at Law
P.O. Box 312
Wrightstown, WI 54180

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Charles E. Summers 579309
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

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

2013AP2752-CRNM State of Wisconsin v. Charles E. Summers (L.C. # 2011CF808)

Before Brown, C.J., Reilly and Gundrum, JJ.

Charles Summers appeals from a judgment convicting him of being party to the crime of armed robbery by threatening use of a dangerous weapon contrary to WIS. STAT. § 943.32(2) (2011-12).[1] Summers' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Summers received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the

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

report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Summers' no contest plea was knowingly, voluntarily, and intelligently entered and had a factual basis and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of the no contest plea, Summers answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Summers' no contest plea was knowingly, voluntarily, and intelligently entered, ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Summers signed is competent evidence of a knowing and voluntary plea. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the

time a plea is taken. ***Hoppe***, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Summers' no contest plea.[2]

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Summers to a twelve-year term (six years of initial confinement and six years of extended supervision consecutive to another sentence). In fashioning the sentence, the court considered the need to protect the public, the seriousness of the offense, Summers' character, history of other offenses, rehabilitation needs and need for incarceration, and Summers' previous failure on probation. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court deemed Summers eligible for the Challenge Incarceration Program and the Substance Abuse Program. The felony sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

[2] Summers was convicted as party to the crime, but the circuit court did not ensure, at the plea hearing, that Summers understood party to the crime liability. Nevertheless, we conclude that the court's omission did not render the plea colloquy defective. In ***State v. Brown***, 2012 WI App 139, ¶1, 345 Wis. 2d 333, 824 N.W.2d 916, we held that a plea colloquy at which the circuit court fails to explain party to the crime liability is not defective if the defendant admits to directly committing the act. Such an admission renders superfluous the explanation of party to the crime liability. ***Id.*** Here, Summers stipulated to a complaint that alleged that he held the firearm, he threatened the victim with the firearm, and demanded the victim's property, and the victim complied. Because Summers directly committed the crime of armed robbery with use of a dangerous weapon, the circuit court's failure to explain party to the crime liability did not render the plea colloquy defective.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Chad Thomas of further representation of Summers in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Chad R. Thomas is relieved of further representation of Charles Summers in this matter.

Diane M. Fremgen
Clerk of Court of Appeals