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DISTRICT I

August 22, 2014

To:

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

2014AP1149-CRNM State of Wisconsin v. Frank Rauls (L.C. #2013CT1158)

Before Curley, P.J.[1]

Frank Rauls appeals a judgment convicting him of operating while intoxicated, as a third offense. Attorney Dustin C. Haskell filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738, 744 (1967). Rauls 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 conclude that there are

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

no issues of arguable merit that Rauls could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Rauls' 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. After a brief clarification, Rauls told the circuit court 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 Rauls that it was not bound to accept the recommendation of his attorney or the district attorney despite the plea agreement, and Rauls said that he understood.

The circuit court informed Rauls of the potential maximum prison term and other penalties he faced and briefly explained the nature of the charge. Rauls said that he understood

the information the circuit court reviewed with him. The circuit court asked Rauls whether he read and understood the information on the plea questionnaire and waiver-of-rights form, and whether he had gone over the form with his lawyer. The form included the constitutional and other rights Rauls was waiving by entering a plea, the penalties for the crime, and the elements of the crime in an addendum. Rauls 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 Rauls was waiving and informed Rauls that he was giving up his right to bring suppression motions, and other claims and defenses. Rauls told the circuit court that he understood.

The circuit court ascertained that Rauls was not taking any medication or drinking alcohol that would impair his ability to understand the proceedings. The court also verified that Rauls was forty-eight years old and had a high school diploma. The circuit court informed Rauls that if he was not a citizen, he could be deported as a result of the conviction. Rauls agreed that there was a factual 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 Rauls to jail for twelve months, but then stayed that sentence in favor of fifteen months of probation with the condition that he serve six months in jail. The circuit court also ordered Rauls' driver's license revoked for three years, ordered that he undergo an alcohol assessment and ordered that any vehicles he owned contain an ignition interlock device for eighteen months.

During its sentencing comments, the circuit court considered both mitigating factors and aggravating factors. The circuit court noted that Rauls had a good work history and had accepted responsibility for his actions. However, the circuit court also noted that Rauls' conduct was dangerous to the community; Rauls could have harmed someone while driving because his blood alcohol level was .272, which is very high. 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 Dustin C. Haskell of further representation of Rauls.

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 Dustin C. Haskell is relieved of any further representation of Rauls in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals