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**DISTRICT II/I**

October 2, 2014

To:

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

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2014AP609-CRNM      State of Wisconsin v. Jamie M. Kilian (L.C. #2013CF180)

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

Jamie M. Kilian appeals a judgment convicting him of burglary to a building or dwelling. Attorney Donna L. Hintze 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). Kilian 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 no

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

issues of arguable merit that Kilian 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 Kilian’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 plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes, 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).

Kilian’s attorney recited the plea agreement on the record during the plea hearing and Kilian 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 Kilian that it was not bound to follow the terms of the agreement, and Kilian said that he understood. The circuit court informed Kilian of the potential maximum prison term he faced if he entered a plea. The circuit court asked Kilian whether he read and understood the information in the plea questionnaire and waiver-of-rights form, and whether he had signed the form. Kilian said that he had. The form included the constitutional and other rights Kilian was

waiving by entering a plea and the maximum penalties for the crime. The circuit court asked Kilian whether he had read and understood the additional sheet attached to the form that listed the elements of burglary, and then the circuit court personally reviewed those elements with Kilian. The circuit court informed Kilian that if he was not a citizen, he could be deported as a result of the conviction. Kilian agreed that the complaint provided 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 Kilian to twelve-and-a-half years of imprisonment, with seven years and six months of initial incarceration and five years of extended supervision. The circuit court explained that it believed that a lengthy prison term was necessary because Kilian had nine prior convictions for burglary, had served prison time for burglary and was on supervision when he committed this burglary only three months after being released. The circuit court emphasized that burglary victims often no longer feel safe in their homes and Kilian's actions were therefore causing many members of the community to feel insecure. 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 Donna L. Hintze of further representation of Kilian.

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 Donna L. Hintze is relieved of any further representation of Kilian in this matter. *See* WIS. STAT. RULE 809.32(3).

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