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November 19, 2014

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

2014AP1577-CRNM State of Wisconsin v. Fabio A. Bonaccorso (L.C. # 2012CF6034)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Fabio A. Bonaccorso appeals from a judgment convicting him of possession with intent to deliver a controlled substance (heroin) as a party to a crime and as a second or subsequent offense. Bonaccorso's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Bonaccorso received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Bonaccorso's guilty plea was knowingly, voluntarily, and intelligently entered and (2) whether the circuit court erroneously exercised its discretion at sentencing.

With respect to the entry of Bonaccorso's guilty plea, the record shows that the circuit court engaged in a colloquy with Bonaccorso that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. That form and attached jury instruction are competent evidence of a valid plea. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987).³ We agree with counsel that any challenge to the entry of Bonaccorso's guilty plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's 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). In imposing a sentence of seven years of imprisonment, the court considered the seriousness of the offense, Bonaccorso's character, and the need to protect the

² There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Bonaccorso's plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. WIS. STAT. § 971.08(2).

³ The plea questionnaire and waiver of rights form fails to take into account the four-year penalty enhancer for second or subsequent offenses. *See* WIS. STAT. § 961.48(1)(b). This omission does not present a potentially meritorious issue for appeal, however, as Bonaccorso affirmed his understanding of the penalty enhancer and the maximum penalty he faced with it at both the initial appearance and change of plea hearing.

public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Bonaccorso’s criminal record, the sentence does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court’s decision at sentencing would lack arguable merit.

Our independent review of the record does 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 and relieve Attorney Marcella De Peters of further representation 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 Marcella De Peters is relieved of further representation of Bonaccorso in this matter.

Diane M. Fremgen
Clerk of Court of Appeals