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**DISTRICT IV**

November 18, 2014

To:

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Circuit Court Judge  
Portage Co. Courthouse  
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Stevens Point, WI 54481-3598

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

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2014AP2045-CRNM      State of Wisconsin v. Zachary J. Deyo (L.C. # 2011CF390)

Before Lundsten, Higginbotham and Sherman, JJ.

Attorney Timothy O'Connell, appointed counsel for Zachery Deyo, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)<sup>1</sup>; *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Deyo's plea or sentencing. Deyo was sent a copy of the report, but has not filed a response. Upon our independent review of the entire record, as

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

well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Deyo was charged with multiple counts of burglary, misdemeanor theft, and misdemeanor criminal damage to property. Pursuant to a global plea agreement involving other cases brought against Deyo, he pled no contest to ten counts of burglary, and the remaining charges were dismissed and read-in for sentencing purposes.<sup>2</sup> The court sentenced Deyo to concurrent sentences of ten years of imprisonment, with six years of initial confinement and four years of extended supervision, as to each count.<sup>3</sup>

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Deyo's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Deyo and determine information such as Deyo's ability to understand the proceedings, that no promises were made to Deyo to obtain his pleas, and that a factual basis existed to support the pleas.<sup>4</sup> See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765

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<sup>2</sup> As part of the global plea agreement, Deyo also pled guilty to bail-jumping charges in two other cases.

<sup>3</sup> Deyo filed a postconviction motion challenging part of the restitution ordered by the court. The circuit court granted the motion.

<sup>4</sup> Counsel informs us in the no-merit report that it may be argued that the plea colloquy was deficient in that the circuit court failed to state on the record: (1) that Deyo could be subject to *both* imprisonment *and* a fine; (2) that the court was not bound by the plea agreement; (3) the elements of burglary as party to a crime; and (4) each of the constitutional rights Deyo gave up by entering his pleas.

(continued)

N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Deyo's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Deyo's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the need to protect the public, Deyo's character, and the gravity of the offense. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the applicable penalty range and was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court granted Deyo 170 days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

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Counsel also informs us, however, that he has determined after discussions with Deyo that there is no basis to argue that Deyo did not understand any of that information when he entered his pleas.

IT IS FURTHER ORDERED that Attorney O'Connell is relieved of any further representation of Deyo in this matter. *See* WIS. STAT. RULE 809.32(3).

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