



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

November 26, 2014

To:

Hon. John R. Race
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Sheila Reiff
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Daniel A. Necci
District Attorney
P.O. Box 1001
Elkhorn, WI 53121-1001

Donna Odrzywolski
6650 W. State St., Unit D, #234
Wauwatosa, WI 53213

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

Aubrey W. Dahl 397100
Wisconsin Resource Center
P.O. Box 220
Winnebago, WI 54985-0220

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

2014AP321-CRNM State of Wisconsin v. Aubrey W. Dahl (L.C. # 2011CF385)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Aubrey W. Dahl appeals from a judgment convicting him of one count of burglary of a dwelling as a repeater and one count of possession of a firearm by a felon. Dahl'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). Dahl received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we

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

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 Dahl's guilty pleas were knowingly, voluntarily, and intelligently entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether Dahl was afforded effective assistance of trial counsel.

With respect to the entry of the guilty pleas, the record shows that the circuit court engaged in a colloquy with Dahl 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. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. The court referred to that form when discussing the rights Dahl was giving up by entering his pleas. This was permissible under *State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that any challenge to the entry of Dahl's guilty pleas would lack arguable merit.²

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. In imposing an aggregate sentence of twenty-two years of imprisonment, the court considered the seriousness of the offenses, Dahl's character, and the need to protect the 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 Dahl's prior criminal record, the sentence

² Also at the plea hearing, Dahl admitted that he was convicted of a felony during the five-year period immediately preceding the commission of the crimes, thereby establishing a basis for the repeater enhancer. See WIS. STAT. §§ 939.62(2) and 973.12(1).

imposed 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.

Finally, with respect to whether Dahl was afforded effective assistance of trial counsel, there is nothing in the record to suggest that Dahl’s trial counsel was ineffective. Indeed, at the plea hearing, Dahl indicated that he was satisfied with his counsel’s representation. Consequently, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ 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 Donna Odrzywolski 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 Donna Odrzywolski is relieved of further representation of Dahl in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

³ The record does not contain a transcript of the restitution hearing. However, the judgment of conviction, which was amended after the restitution hearing was held, indicates that the parties ultimately reached an agreement as to the amount owed. As a result, we conclude that the issue of restitution does not present a potentially meritorious issue for appeal