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December 29, 2014

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

2014AP870-CRNM State of Wisconsin v. Dominic A. Kolp (L.C. #2013CF348)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Attorney Timothy Baldwin, appointed counsel for Dominic Kolp, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Kolp with a copy of the report, and both counsel and this court advised him of his right to file a response. Kolp has not responded. After our independent

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

review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Kolp pled guilty to two felony controlled substance counts and one count of felony bail jumping. The court imposed concurrent sentences of eighteen months of initial confinement and two years of extended supervision on each of the controlled substance counts, and three years of confinement and three years of extended supervision on the bail jumping count.

The no-merit report addresses whether Kolp's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Kolp was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether Kolp's trial counsel might have been ineffective in connection with a motion to suppress evidence. Counsel filed the motion asserting that evidence should be suppressed because, although police had an arrest warrant for Kolb, they lacked a search warrant for the residence where they made the arrest. The State responded, and then Kolp pled guilty without the motion being decided.

The no-merit report discusses the idea, apparently raised by Kolp himself, that counsel may have encouraged a plea without a decision on the motion so as to prevent a delay that would result in the case being taken over by a less favorable judge in the rotation system. Nothing in the record suggests that counsel had this reason. Neither the no-merit report nor Kolp has given us any specific, detailed facts to consider on this point. As a general proposition, a change of judge is a proper factor for counsel to consider in making a decision or giving advice. However,

lacking any specific facts, we do not further address this point as it might relate to ineffective assistance.

We also note that the suppression motion and the State's response, while not showing obvious direct factual conflicts, do not appear to be fully in agreement on the facts. Because there was no hearing, there are no findings. Therefore, we do not rely on the specific facts of the State's response.

That said, the State's *legal* response to the motion appears to be one that could reasonably lead Kolp's attorney to believe the motion had little chance of success. The State's response boils down to an argument that, if the apartment where Kolp was arrested is considered his residence, the motion must be denied because the police did not require a search warrant to arrest the defendant in his own residence, but if the apartment was *not* Kolp's residence, then Kolp lacks standing to challenge the police entry to the apartment. Therefore, based on the information currently available to us, we conclude that there is no arguable merit to a claim that counsel was ineffective by allowing Kolp to plead guilty before the suppression motion was decided.

The no-merit report addresses whether the sentence is within the legal maximum and whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Timothy Baldwin is relieved of further representation of Dominic Kolp in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals