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January 13, 2015

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

2014AP1951-CRNM	State of Wisconsin v. Daviad Joseph Prouty (L.C. #2012CF1377)
2014AP1952-CRNM	State of Wisconsin v. Daviad Joseph Prouty (L.C. #2012CF1778)

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

Daviad Joseph Prouty appeals judgments convicting him of false imprisonment and intimidation of a witness, both as acts of domestic violence. Attorney Scott A. Szabrowicz filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Prouty responded to the report.

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

After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Prouty could raise on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether Prouty's pleas were knowingly, voluntarily, and intelligently entered. In order to ensure that a defendant is knowingly, intelligently, and voluntarily 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 to which he is pleading, 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, 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).

During the plea hearing, the prosecutor stated the plea agreement on the record. The State reduced the charges against Prouty in exchange for Prouty's plea of guilty to intimidating a witness and no contest to false imprisonment. The circuit court informed Prouty that it was not bound by the plea negotiations and could sentence Prouty up to the maximum term, and Prouty said that he understood. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court explained to Prouty that if it accepted the no-contest plea to the charge of false imprisonment, it would find Prouty guilty of the charge. The circuit court also

explained the potential maximum prison term Prouty faced and the elements of each charge. The circuit court reviewed with Prouty the constitutional rights he was waiving by entering a plea. The circuit court asked Prouty whether he had reviewed the information on the plea questionnaire and waiver of rights form with his attorney and asked whether he understood the information. The circuit court ascertained that there was a factual basis for each charge and plea, and was informed that Prouty was pleading no contest to the false imprisonment charge because he agreed that the facts substantiated the charge, but he could not remember what happened due to his intoxication. Based on the circuit court's 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 addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court imposed a concurrent term of four and one-half years of imprisonment on each charge, with two and one-half years of initial confinement and two years of extended supervision. Before imposing sentence, the circuit court heard testimony from the victim, who was ninety-four years old and had raised Prouty, who was now fifty-four. The circuit court explained that the crime was aggravated because the victim was elderly and vulnerable. The court pointed out that Prouty became mean and violent when he drank, especially with all of the medications he was taking, but that his intoxication was not an excuse for his violent behavior. 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. The sentence is not too harsh in light of the facts and circumstances of this case. There would be no arguable merit to a claim that the circuit court's sentence was unduly harsh or otherwise a misuse of discretion.

In his response, Prouty argues that he should have been convicted of violating a restraining order, not intimidating a witness. There is no arguable merit to this claim. Prouty was initially charged with both crimes, but the charge of violating a restraining order was dismissed and read in pursuant to the plea agreement. During the plea hearing, the circuit court asked Prouty if he understood that, by pleading guilty to intimidating a witness, he understood that he was acknowledging that he knowingly and maliciously attempted to dissuade the victim, who was a witness to the crime, from attending a proceeding authorized by law. Prouty informed the circuit court that he understood. By pleading guilty, Prouty has waived his right to challenge this conviction. *See State v. Riekkoff*, 112 Wis. 2d 119, 122-23, 332 N.W.2d 744 (1983) (a plea of guilty, knowingly and understandingly made, waives nonjurisdictional defects and defenses, including claimed violations of constitutional rights).

Our independent review of the record reveals no arguable basis for reversing the judgments of conviction. Therefore, we affirm the judgments of conviction and relieve Attorney Scott A. Szabrowicz of further representation of Prouty.

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Scott A. Szabrowicz is relieved of any further representation of Prouty in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals