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**DISTRICT I**

January 29, 2015

To:

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

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2014AP1720-NM      In the interest of Deandre S., a person under the age of 17:  
State of Wisconsin v. Deandre S. (L.C. #2013JV344A)

Before Brennan, J.<sup>1</sup>

Deandre S. appeals a dispositional order entered on October 31, 2013, adjudicating him delinquent upon his admission to one count of armed robbery with threat of force as a party to the crime. The circuit court ordered Deandre S. placed with the Department of Corrections and committed him to a juvenile correctional facility for a period of one year. Appellate counsel, Dennis J. Weden, filed a no-merit report on Deandre S.'s behalf pursuant to WIS. STAT. RULE

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

809.32 and *Anders v. California*, 386 U.S. 738 (1967). Deandre S. did not file a response. This court has considered the no-merit report and independently reviewed the record. Because this court concludes that an appeal would lack arguable merit, the dispositional order is summarily affirmed.

### ***Background***

The delinquency petition in this matter alleged that Deandre S. committed armed robbery with threat of force and robbery with use of force, both as a party to the crimes. The allegations stemmed from events that took place on September 5, 2013.

At about 9:00 p.m. that night, two individuals robbed D.R. of his cell phone.

Approximately forty-five minutes later, S.T. was at a bus stop when she was approached by two individuals. S.T. told police that the individuals told her she was “looking nice,” at which point she told them that she had a boyfriend. The individuals then asked what she had on her. After she told them that she did not have much, the individuals got upset, pointed a pistol at the back of her head, and stole her purse.

The petition relayed that a citizen witnessed the robbery of S.T. The citizen was driving a cab when he saw two individuals approach S.T. He saw the individuals grab S.T.’s purse and run away. He drove around the block and was in front of a residence on a nearby street when he saw one of the individuals walking out the front door. The citizen then called the police.

When police went to investigate, they observed a purse that was hanging on a tree behind the residence. The purse was later identified as belonging to S.T. Deandre S.’s mother consented to a search of the residence, and the police found the cell phone belonging to D.R. In

Deandre S.'s bedroom, police also found a replica .45-caliber Smith & Wesson BB gun, which matched the description of the gun given by S.T.

In statements to police, Deandre S. admitted his involvement in both crimes. He was fifteen years old at the time.

During the circuit court proceedings, Deandre S.'s attorney raised the issue of his competency and requested an examination. The psychologist, noting that Deandre S. had cognitive capabilities in the mild mental disability range and academic achievement at a third-grade level in all areas, nevertheless concluded that Deandre S. was competent to proceed and assist with his defense. The attorneys did not challenge these conclusions, and after a colloquy, Deandre S. waived his right to a competency hearing. Consequently, the circuit court found him competent to proceed.

Deandre S. entered an admission to the charge of armed robbery with threat of force as a party to the crime. The charge of robbery with use of force as a party to the crime was dismissed and read in at the dispositional hearing. The circuit court accepted Deandre S.'s admission and adjudged him delinquent. The court ordered Deandre S. to be placed at Lincoln Hills for one year and to pay \$244 in restitution.<sup>2</sup>

### *Discussion*

We first consider whether Deandre S. could pursue an arguably meritorious challenge to the validity of his admission to the charge of armed robbery with threat of force as a party to a

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<sup>2</sup> Deandre S.'s trial attorney stipulated to this amount.

crime. “[T]o make a prima facie case for plea withdrawal, a juvenile must first show that the plea was accepted without the circuit court’s conformance with mandatory procedures.” *See State v. Kywanda F.*, 200 Wis. 2d 26, 42, 546 N.W.2d 440 (1996). Pursuant to WIS. STAT. § 938.30(8), a circuit court that accepts a juvenile’s admission to facts alleged in a delinquency petition must: (1) address the juvenile personally and determine that the admission is voluntarily made with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any threats or promises were made to elicit an admission; and (3) make such inquiries as satisfactorily establish a factual basis for the juvenile’s admission. *See* § 938.30(8)(a)-(c). The proceedings here satisfied the statutory requirements.

A plea questionnaire and waiver of rights form for juveniles signed by Deandre S. and his trial lawyer is in the record. *Cf. State v. Hoppe*, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (discussing guilty pleas and stating that a plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The jury instruction for armed robbery was attached to the form and listed the elements of the crime. Additionally, Deandre S.’s trial attorney confirmed for the court that she had discussed the concept of party to a crime with him and the effect of a charge that was dismissed and read in. A challenge to the validity of the admission would lack arguable merit.

Although counsel did not address it, this court also considers whether an arguably meritorious challenge could be made on the issue of Deandre S.’s competency. Early in the proceedings Deandre S.’s trial attorney raised the issue of competency, and the circuit court ordered an examination by the psychologist suggested by Deandre S.’s attorney. The psychologist concluded Deandre S. was competent to proceed and assist with his defense. The parties stipulated to these conclusions. While Deandre S. may have had a low intelligence level,

this alone does not render him unable to knowingly and intelligently enter a stipulation. *See, e.g., State v. Salentine*, 206 Wis. 2d 419, 431, 557 N.W.2d 439 (Ct. App. 1996). Based on the record before this court, a challenge to competency would lack arguable merit.

An appellate challenge to the disposition would also lack arguable merit. “Disposition of a child’s delinquency adjudication rests in the sound discretion of the [circuit] court.” *State v. James P.*, 180 Wis. 2d 677, 682, 510 N.W.2d 730 (Ct. App. 1993). When fashioning a disposition, the circuit court must “consider the seriousness of the offense, the need to protect citizens from juvenile crime, the need to prevent further delinquent acts, and the juvenile’s needs for care and treatment.” *State v. Richard J.D.*, 2006 WI App 242, ¶13, 297 Wis. 2d 20, 724 N.W.2d 665.

The circuit court considered the serious nature of armed robbery and found that Deandre S. had been an active participant in both it and the dismissed and read-in robbery charge. The circuit court reflected on what the public would want it to do: “The public would love to get off buses at all hours of the day in all sections of this county without having to worry about two kids coming up to them with guns and stealing [from] them and maybe doing something else to them.” It discussed the impact on the victims who no longer felt safe in the community.

The circuit court concluded that one year at Lincoln Hills was necessary. The circuit court may place a child in a juvenile correctional facility if the child “has been found to be delinquent for the commission of an act that would be punishable by a sentence of six months or more if committed by an adult,” and the child “has been found to be a danger to the public and to be in need of restrictive custodial treatment.” *See* WIS. STAT. § 938.34(4m). In this case, the circuit court found Deandre S. delinquent for armed robbery, a crime punishable by forty years if committed by an adult. *See* WIS. STAT. §§ 943.32(2); 939.50(3)(c). Further, the circuit court

found that Deandre S. was a danger to the public and in need of restrictive custodial treatment. A challenge to the circuit court's decision to place Deandre S. in a juvenile correctional facility for one year would lack arguable merit.

Based on our independent review of the record, no other issues warrant discussion. We conclude that any further proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the dispositional order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis J. Weden is relieved from further representing Deandre S. *See* WIS. STAT. RULE 809.32(3).

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