



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 I

February 13, 2015

To:

Hon. Rebecca F. Dallet
Circuit Court Judge
Branch 40
821 W State St
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Angela Conrad Kachelski
Kachelski Law Office
7101 N. Green Bay Ave., Suite 6A
Milwaukee, WI 53209

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Terry Millighan 280677
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2014AP1836-CRNM State of Wisconsin v. Terry Millighan (L.C. #2012CF5659)

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

Terry Millighan appeals a judgment convicting him of two counts of first-degree recklessly endangering safety with use of a dangerous weapon, one as a domestic abuse incident, and one count of felon in possession of a firearm. Attorney Angela C. Kachelski 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). Millighan filed a response. Counsel then filed

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

a supplemental no-merit report, to which Millighan again responded. After considering the no-merit reports and the responses, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Millighan could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Millighan’s guilty plea was 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 guilty 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 guilty, 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, as part of its inquiry, 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 circuit court explained to Millighan the maximum penalties he faced by pleading guilty to the charges and Millighan said he understood. The circuit court informed Millighan that it did not have to follow the sentencing recommendations of his attorney or the prosecutor, and could sentence him up to the maximum. The circuit court ascertained that Millighan knew that he was giving up constitutional rights by pleading guilty, which were listed on the plea questionnaire and waiver-of-rights form, and reviewed some of those rights with

Millighan during the hearing. The circuit court also asked Millighan whether he understood the information on the plea questionnaire, which he reviewed with his attorney, and asked whether he signed the form, which indicated that he was forty-four years old and had completed eleven years of schooling. Millighan said that he did.

The circuit court reviewed the elements of each of the offenses with Millighan and explained what “criminally reckless conduct” and “great bodily harm” meant. Millighan told the circuit court that he understood. Millighan admitted that the facts alleged in the complaint were true and the circuit court found that they provided a basis for the plea. The circuit court informed Millighan that his plea could result in his deportation if he were not a citizen, *see State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1, and ascertained that no one had threatened him in order to get him to plead guilty. Based on the circuit court’s thorough plea colloquy with Millighan, and Millighan’s review of 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 next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Millighan to seven years on each count of first-degree recklessly endangering safety, with five years of initial confinement and two years of extended supervision, and four years for being a felon in possession of a firearm, with two years of initial confinement and two years of extended supervision, all to be served consecutively. The circuit court considered mitigating factors, like the fact that Millighan seemed genuinely remorseful, accepted responsibility for his actions, had a strong work history, and had only one prior felony conviction. Despite these positive factors, the circuit court concluded that substantial prison time was necessary due to the seriousness of the offenses. Millighan fired twenty-two shots from his apartment window in a crowded residential area at the

two victims, who were vandalizing his car. Acknowledging the frustration that Millighan must have felt being harassed by the victims over the course of the evening and watching them vandalize his car while he waited for the police to arrive, the circuit court stated that his decision to shoot at them repeatedly over a period of thirty minutes could have killed them or innocent bystanders. The circuit court found particularly aggravating the fact that Millighan continued to fire shots even after one of the two victims had been hit. The circuit court explained its application of the various sentencing considerations 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. There would be no arguable merit to a claim that the circuit court misused its sentencing discretion.

In his responses, Millighan points out that there are many positive aspects of his character, like his strong work history and the volunteer work he has done to better his community. He asks that the sentences be run concurrently based on these positive attributes and the fact that he has learned from his mistakes. On appeal, our review of a sentence imposed by the circuit court is limited to determining whether the circuit court misused its discretion. *Id.* The length of the sentence and the decision to run a sentence concurrently or consecutively are decisions committed to the discretion of the circuit court, not this court. We will not reverse the circuit court's decision unless it acts contrary to law or otherwise misuses its discretion.

Millighan argues in his responses that the sentencing court should have been made aware that the victim's brother hit him in the head with a gun one month before this shooting, and that he needed five staples to repair the damage. Regardless of whether Millighan was wronged by the victim's brother, Millighan made a choice to shoot at the victim from his third or fourth story apartment window, where he faced no immediate threat to his personal safety. The prior actions

of the victim's brother do not mitigate Millighan's actions or provide a basis for appellate relief given the circuit court's reasons for imposing the sentence that it did.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Angela C. Kachelski of further representation of Millighan.

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

IT IS FURTHER ORDERED that Attorney Angela C. Kachelski is relieved of any further representation of Millighan in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*