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March 4, 2015

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

2014AP1838-CRNM State of Wisconsin v. Anthony R. Radencich (L.C. #2013CF5031)

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

Anthony R. Radencich appeals a judgment convicting him of being a felon in possession of a firearm. Attorney Timothy L. Baldwin filed a no-merit report seeking to withdraw as

appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Radencich was informed of his right to file a response, but he has not done so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Radencich 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 an appellate challenge should be brought to withdraw Radencich's guilty plea on the grounds that it was not knowingly, voluntarily, and intelligently entered. *See* WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶36, 293 Wis. 2d 594, 716 N.W.2d 906. Attorney Baldwin explains that he discussed potential issues for appeal with Radencich, and Radencich decided that he does not want to withdraw his guilty plea. There would be no point to raising this argument on appeal because Radencich does not wish to withdraw his plea.

The no-merit report next addresses whether there would be arguable merit to a challenge to Radencich's sentence on appeal. The circuit court sentenced Radencich to seventy months of imprisonment, with forty months of initial confinement and thirty months of extended supervision. In deciding the length of Radencich's sentence, the circuit court considered Radencich's character, his prior criminal history, the need to protect the public, and the need to punish Radencich for continuing to break the law. The circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing considerations in depth in accordance with the framework set forth in *State v.*

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Gallion, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum allowed by law and is not excessive in light of the circumstances of the case, particularly Radencich's prior criminal history. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report next addresses whether a claim that Radencich received ineffective assistance of trial counsel should be raised on the grounds that his lawyer failed to adequately explain that the drug charge dismissed pursuant to the plea agreement could be considered by the circuit court at sentencing as evidence of Radencich's character. The no-merit report explains that Radencich has determined that he does not want to raise this argument because he does not want to withdraw his plea, which would be the remedy if he were successful. The no-merit report also addresses whether Radencich should argue that he received ineffective assistance of counsel because his lawyer did not object when the circuit court considered at sentencing the fact that he was carrying an ounce of marijuana when he was arrested. This argument would be unavailing because the circuit court is permitted to consider circumstances leading to a defendant's arrest even if the defendant is not prosecuted for his actions. *See State v. Leitner*, 2002 WI 77, ¶45, 253 Wis. 2d 449, 646 N.W.2d 341. There would be no arguable merit to a claim of ineffective assistance of counsel based on counsel's failure to object at the sentencing hearing.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Timothy Baldwin of further representation of Radencich.

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 Timothy L. Baldwin is relieved of any further representation of Radencich in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*