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DISTRICT III

March 11, 2015

To:

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

2014AP1686-CRNM State of Wisconsin v. Benjamin Macario Martinez
(L.C. # 2012CF33)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Benjamin Martinez filed a no-merit report concluding no grounds exist to challenge Martinez's convictions for possession of Tetrahydrocannabinol (THC), as a second or subsequent offense, and possession of drug paraphernalia. By order dated January 15, 2015, we indicated that upon our review of the record and the transcript of the plea hearing, we could not conclude there was no arguable basis for challenging the pleas, as the court did not expressly inform Martinez of the maximum possible penalties. We noted that if there is a deficiency in the plea colloquy, a defendant may move for plea withdrawal. *State v. Bangert*, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). The motion must (1) make a prima facie showing of a violation of

WIS. STAT. § 971.08 or other court-mandated duty, and (2) allege that the defendant did not, in fact, know or understand the information that should have been provided during the plea colloquy. *Id.*

Martinez did not respond to the no-merit report and had not alleged that he did not know the potential penalties he faced by pleading no contest. We therefore directed counsel to ascertain from Martinez whether he alleges lack of knowledge of the penalties at the time he entered his no contest pleas. Counsel has now informed this court that Martinez asserts he did not understand the potential penalties at the time he entered his pleas. Counsel further indicates that after advising Martinez about the consequences of pursuing a motion for plea withdrawal, Martinez wishes to withdraw his pleas. We will therefore reject the no-merit report, dismiss the appeal and extend the time for counsel to file a postconviction motion for plea withdrawal.

Upon the foregoing,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed.

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to April 13, 2015.

Diane M. Fremgen
Clerk of Court of Appeals