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March 18, 2015

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

2014AP2057-CRNM State of Wisconsin v. Justin L. Smith (L.C. #2013CF877)

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

Justin L. Smith appeals a judgment convicting him of armed robbery. Attorney Andrew H. Morgan 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). Smith 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

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

of arguable merit that Smith could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report provides an overview of circuit court proceedings and concludes that there are no issues of arguable merit for appeal. The report briefly addresses whether there would be arguable merit to a claim that Smith's guilty plea was not 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 asked Smith whether he had any questions about the plea questionnaire and waiver-of-rights form and whether he had signed it. Smith acknowledged that he signed it and said he did not have any questions. The circuit court asked Smith whether he had enough time to speak to his lawyer about this case, and Smith said that he did. The circuit court asked Smith whether he read the criminal complaint and whether the

information in it was true and accurate. Smith indicated that he had read the complaint and the information was accurate.

The circuit court explained to Smith the elements of the crime, which were also listed in jury instructions attached to the plea questionnaire, and asked Smith whether he understood them. Smith said he did. Smith also acknowledged that he had gone over the elements of the crime with his lawyer. The circuit court reviewed with Smith in person the constitutional rights he was giving up by pleading guilty, which were also listed on the plea questionnaire, and asked Smith whether he understood the rights. Smith said that he did. Smith's lawyer stated the plea agreement on the record, which called for the prosecutor to dismiss the repeater allegation and recommend no more than six years of initial confinement and six years of extended supervision in exchange for Smith's plea. The circuit court informed Smith that it was not bound by the agreement and could sentence Smith up to the maximum sentence, and Smith acknowledged that he understood this information. *See* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court informed Smith 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 Smith in order to get him to plead guilty. Based on the circuit court's thorough plea colloquy with Smith, and Smith'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 challenge to Smith's sentence on appeal. The circuit court sentenced Smith to twelve years of imprisonment, with six years of initial confinement and six years of extended supervision, to be

served concurrently to another sentence Smith was serving. The circuit court also made Smith eligible for the Challenge Incarceration Academy and the Earned Release Program.

In deciding the length of Smith's sentence, the circuit court considered Smith's need for rehabilitation, the need to protect the public, the gravity of the offense and Smith's character. The circuit court considered mitigating the fact that the State might still not know anything about the robbery if Smith had not asked to see an officer and confessed to the crime. 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. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

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

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 Andrew Morgan is relieved of any further representation of Smith in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals