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 III/I

July 7, 2015

To:

Hon. Kristina M. Bourget
Circuit Court Judge
721 Oxford Avenue
Eau Claire, WI 54703

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
721 Oxford Avenue, Ste. 2220
Eau Claire, WI 54703-5496

Chris A. Gramstrup
Gramstrup Law Office
1409 Hammond Ave., Ste. 322
Superior, WI 54880

Gary M. King
District Attorney
721 Oxford Ave
Eau Claire, WI 54703

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

Michael D. Bradley 317855
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2014AP2734-CRNM State of Wisconsin v. Michael D. Bradley (L.C. #2012CF454)

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

Michael D. Bradley appeals a judgment convicting him of one count of delivering methamphetamine, as a repeater. Attorney Chris A. Gramstrup 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). Bradley filed a response. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude

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

that there are no issues of arguable merit that Bradley 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 Bradley's guilty plea was knowingly, intelligently and voluntarily 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 the 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 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 prosecutor explained the plea agreement on the record and Bradley told the circuit court that the agreement as stated was in accord with his understanding. The court explained to Bradley that it was not required to follow the recommendation of either the prosecutor or Bradley's lawyer, and could sentence him up to the maximum amount allowed by law. *See* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Bradley said he understood.

The circuit court reviewed the maximum potential penalties Bradley faced and the elements of the crime with Bradley. Bradley informed the court that he understood. The court reviewed the constitutional rights Bradley was waiving with him on the record. The court also informed Bradley that if he was not a citizen of the United States of America, he could be deported if he pled guilty to the crime. *See* ***State v. Douangmala***, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. The court ascertained that Bradley had read and signed the plea questionnaire and waiver-of-rights form. Bradley told the court that the information on the form about him was correct and informed the court that he had reviewed information on the form, including the constitutional rights, with his lawyer.

The circuit court asked Bradley whether he had reviewed the criminal complaint and whether the court could use the facts alleged in the complaint as the basis for the plea. Bradley acknowledged reading the complaint and said that the court could use it as a factual basis for the plea. When the court asked Bradley if it could also use the information from the preliminary hearing as a basis for the plea, Bradley said that the court could use the information from the preliminary hearing as well. In his response, Bradley argues that the court did not establish that a factual basis existed to support the plea because it did not review the particular circumstances of the offense with Bradley during the colloquy. Bradley's argument is not a basis for a viable appellate challenge because there is no requirement that the court review the information in the complaint on the record in a case where, as here, the defendant acknowledges reading the complaint and informs the court that the facts in the complaint are accurate and can serve as a basis for the plea. Based on the court's thorough plea colloquy with Bradley, and Bradley'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 Bradley's trial lawyer rendered constitutionally ineffective assistance. To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that he was prejudiced by the deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). In the no-merit report, Attorney Gramstrup states that when he met with Bradley to discuss this appeal, Bradley was unable to provide counsel with any information that pointed to deficient performance by Bradley's trial attorney. Our review of the record reveals no basis for such a claim. Therefore, we conclude that there would be no arguable merit to a claim that Bradley received ineffective assistance of trial counsel.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The court sentenced Bradley to seven years of imprisonment, with four years of initial confinement and three years of extended supervision. In deciding the sentence, the court explained that it considered the protection of the community, the need to punish Bradley and Bradley's rehabilitation needs. The court noted that Bradley had a long history of criminal offenses and had repeatedly been given opportunities to stop using and selling drugs. The court concluded that prison was appropriate because methamphetamines had a deleterious effect on the community and the community deserved protection. The court said that its sentence was also designed to both punish Bradley for his actions and facilitate his rehabilitation because he would not be able to kick the drug habit unless he was confined to prison. The court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines 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.

In his response, Bradley contends that the circuit court misused its sentencing discretion because it told him he was not eligible for the Earned Release Program during sentencing but, after considering two letters from Bradley after sentencing, concluded that he was eligible for the Earned Release and Challenge Incarceration programs because it had misread the statute. The court's decision to amend the judgment of conviction to reflect Bradley's eligibility for the programs does not provide grounds for arguing that the court misused its sentencing discretion in other respects. There would be no arguable merit to this claim.

Bradley also argues in his response that he was not offered the opportunity to review the presentence investigation report that the circuit court considered at sentencing. The record contradicts Bradley's claim. During the sentencing hearing, the court asked Bradley whether he had time to review the report. Bradley informed the court that he had. The court then asked Bradley whether he wanted to make any corrections, and Bradley replied that he did not want to make any specific corrections, though he disagreed with the way that some of the information was characterized. Based on the transcript of the sentencing hearing, there would be no arguable merit to a claim that Bradley was not offered the opportunity to review the presentence investigation report.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Chris A. Gramstrup of further representation of Bradley.

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 Chris A. Gramstrup is relieved of any further representation of Bradley in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals