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DISTRICT I

September 30, 2015

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

2015AP841-CRNM State of Wisconsin v. Kadri Floyd Hayden (L.C. #2012CF4990)

Before Kessler, Brennan and Bradley, JJ.

Kadri Floyd Hayden appeals a judgment convicting him after a guilty plea of conspiracy to deliver THC, between 2,500 and 10,000 grams. Attorney Michael J. Backes 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). Hayden 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

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

Hayden 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 there would be arguable merit to an appellate challenge to Hayden’s guilty plea. 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 both Hayden and Hayden’s attorney informed the circuit court that the agreement as explained was in accord with their understanding. The court reviewed the maximum potential penalties Hayden faced. Hayden informed the court that he understood. The court explained to Hayden that it was not bound by the negotiations between the parties or by the plea agreement. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Hayden said he understood. The court informed Hayden 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 also reviewed the constitutional rights Hayden was waiving with him on the record. Hayden informed the court that he understood all of these matters.

The circuit court also ascertained that Hayden reviewed the plea questionnaire and waiver-of-rights form, which listed the constitutional rights Hayden was waiving, the elements of the crime and the maximum penalty Hayden faced. Hayden signed the plea questionnaire, which is included in the record, and informed the court that he had reviewed the form with his attorney, understood the information on the form, and had no questions about it.

The circuit court asked Hayden whether he had reviewed the criminal complaint. When Hayden informed the court that he had read “most of” the criminal complaint, the court gave Hayden an opportunity to read the entire complaint before continuing with the plea colloquy. When proceedings resumed, Hayden informed the court that the facts alleged in the complaint were true. The court then found that the facts alleged in the complaint provided a factual basis for the plea. Based on the court’s thorough plea colloquy with Hayden, and Hayden’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 an appellate challenge to the sentence the circuit court imposed on Hayden. The court sentenced Hayden to six years of imprisonment, with three years of initial confinement and three years of extended supervision, to be served consecutively to the revocation sentence Hayden was already serving. The circuit court also found that Hayden was not eligible for the Challenge Incarceration Program or the Substance Abuse Program. In framing the sentence, the court rejected Hayden’s

request that his sentence be imposed concurrently to the revocation sentence he was then serving, placing emphasis on Hayden's prior record of drug convictions and the fact that he had absconded from supervision when he committed this crime. 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.

The no-merit report next addresses whether there would be arguable merit to a motion for sentence modification. Counsel explains that Hayden was unable to provide him with any information that would support a motion for sentence modification and that there is nothing in the record that would support such a motion. There would be no arguable merit to a motion for sentence modification.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Michael J. Backes of further representation of Hayden.

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 Michael J. Backes is relieved of any further representation of Hayden in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals