



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 I

October 9, 2015

To:

Hon. William W. Brash
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Thomas J. Erickson
Attorney at Law
316 N. Milwaukee St., Ste. 206
Milwaukee, WI 53202

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Angelo Deniro Cruz 594582
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2015AP413-CRNM State of Wisconsin v. Angelo Deniro Cruz (L.C. #2013CF5493)

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

Angelo Deniro Cruz appeals a judgment convicting him of two counts of attempted first-degree intentional homicide, two counts of first-degree recklessly endangering safety, with use of a dangerous weapon, one count of felon in possession of a firearm, and one count of intentionally pointing a firearm at a person. Attorney Thomas J. Erickson filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v.*

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

California, 386 U.S. 738, 744 (1967). Cruz filed a response. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Cruz 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 Cruz's pleas were knowingly, intelligently, and voluntarily entered. Cruz pled no contest to the two counts of attempted first-degree intentional homicide and pled guilty to the four other charges. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty or no-contest 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 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 prosecutor explained the plea agreement on the record. The circuit court reviewed the agreement with Cruz, who told the circuit court that he understood the agreement. The circuit court explained to Cruz the maximum penalties he faced by entering pleas to the charges. The circuit court informed Cruz that it was not required to follow the

recommendation of either the prosecutor or Cruz's lawyer even though there was a plea agreement and told Cruz it could sentence him up to the maximum term for each charge. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Cruz said he understood.

The circuit court asked Cruz whether he had reviewed the information set forth in the plea questionnaire and waiver-of-rights form and whether he had signed the form. The circuit court also asked Cruz whether he understood the information and whether he had any questions. Cruz told the court that he had reviewed and signed the forms and said that he did not have any questions about the information on the forms. The circuit court reviewed with Cruz information he provided on the forms about his schooling and other matters, and also reviewed with Cruz the constitutional rights he was waiving. Cruz told the court that he understood as they reviewed each right. The circuit court then explained the elements of each crime to Cruz to ensure that he understood the charges to which he was pleading guilty.

The circuit court asked Cruz whether it could use the facts alleged in the complaint as the basis for the plea. Cruz told the court that it could. The circuit court explained to Cruz the ramifications of entering a plea of no contest, as opposed to guilty, to the two charges of attempted first-degree intentional homicide. Based on the circuit court's thorough plea colloquy with Cruz, and Cruz'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 the circuit court misused its sentencing discretion. At sentencing, the circuit court's objective is to protect the community, punish and rehabilitate the defendant, and deter others from

committing crimes. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. To further these objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender and the circumstances of the crime. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given each factor is committed to the circuit court's discretion. *State v. Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197.

The circuit court sentenced Cruz to thirty-five years of imprisonment on each count of attempted first-degree intentional homicide, with twenty-five years of initial confinement and ten years of extended supervision. The circuit court sentenced Cruz to fifteen years of imprisonment on each count of first-degree recklessly endangering safety, with ten years of initial confinement and five years of extended supervision. The circuit court also sentenced Cruz to six years of imprisonment for felon in possession of a firearm, with three years of initial confinement and three years of extended supervision. Finally, the circuit court imposed nine months in jail for the crime of intentionally pointing a firearm at another person. All of the sentences were imposed concurrently to each other, but consecutively to any other sentences imposed on Cruz.

The circuit court first considered information provided by both Cruz and the prosecutor with regard to the accuracy of the presentence investigation report. After addressing clarifications and corrections suggested by the parties, the circuit court explained the factors it considered in imposing sentence in great detail, stating that it was a miracle that no one was seriously injured when a simple traffic stop escalated into a gun fight in a residential community. The circuit court considered Cruz's prior record, placing particular weight on the fact that he had an automatic weapon in his car even though he had previously been convicted of a felony and

knew that he was not allowed to have a gun. The circuit court addressed the need to protect the community, punish Cruz, and address Cruz's rehabilitation needs.

The circuit court considered statements from the police officers who were the victims of the crimes and discussed the dangerous work they do to ensure that society is safe. The circuit court also noted positive aspects of Cruz's character, and the love and support shown him by his family and friends. The circuit court explained that it had to balance all of the different perspectives on Cruz and the crimes he committed in framing its sentence. The circuit 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 *Gallion* and its progeny. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

In his response, Cruz argues that his right to be free from double jeopardy was violated because he was placed in segregation at the Milwaukee County Jail when he was arrested. He contends that he was punished twice—first by being placed in segregation and second by being sentenced to prison for his crimes. We agree with Cruz's appointed appellate counsel that Cruz's placement in segregation did not implicate Cruz's constitutional right to be free from double jeopardy. He was placed in segregation pursuant to an administrative decision made by jail personnel, likely due to safety concerns. His segregation status in jail after his arrest was not a "punishment" as that term is used with regard to constitutional prohibitions against double jeopardy. There would be no arguable merit to this claim.

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

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 Thomas J. Erickson is relieved of any further representation of Cruz in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*