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**DISTRICT I**

December 1, 2015

To:

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

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2015AP1252-CRNM      State of Wisconsin v. Danny J. Heredia (L.C. #2014CF876)

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

Danny J. Heredia appeals a judgment convicting him of second-degree sexual assault/use of force. Attorney Michael J. Backes filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Heredia 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

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

arguable merit that Heredia 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 any basis for arguing that Heredia did not knowingly, intelligently, and voluntarily enter his no-contest 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 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 prosecutor stated the plea agreement on the record and the circuit court explained to Heredia that it was not required to follow the recommendation of either the prosecutor or Heredia’s lawyer, and could sentence Heredia up to the maximum term of fifteen years of initial confinement followed by ten years of extended supervision. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14.

The circuit court conducted a colloquy with Heredia during which it explained the crime to him and informed him of the maximum penalties he faced by entering a plea. Heredia informed the court that he understood. The circuit court personally reviewed the constitutional rights Heredia was waiving with him on the record. The circuit court informed Heredia 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 circuit court ascertained that Heredia had reviewed the plea questionnaire and waiver-of-rights form with his attorney and that he had signed it. The circuit court asked both Heredia personally and Heredia's lawyer whether they had gone over the elements of the offense together, which were listed in an addendum to the plea questionnaire. Heredia's lawyer said he had reviewed the elements with Heredia and was satisfied that he understood them. Heredia also personally acknowledged that he reviewed the elements of the offense with his lawyer and knew what the State would have to prove to convict him. The plea questionnaire addendum informed Heredia that he was waiving the right to raise defenses to the charge by pleading no contest.

The circuit court asked Heredia whether he had reviewed the criminal complaint and whether the facts alleged in the complaint could serve as the basis for the plea. Heredia's lawyer stipulated that the complaint provided a factual basis for the plea, but pointed out that Heredia disagreed with some of the statements attributed to him and disagreed that there was "bad blood" between Heredia and the victim. Based on the circuit court's thorough plea colloquy with Heredia, and Heredia'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 when it imposed fifteen years of initial confinement and ten years of extended supervision on Heredia. In framing its sentence, the circuit court explained that Heredia presented a danger to the community and needed to be punished. But the circuit court also noted mitigating circumstances; Heredia was the victim of horrible abuse at the hands of his foster parents. 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 *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.

Heredia next contends in his response that the prosecutor engaged in misconduct. We have reviewed various statements by the prosecutor with which Heredia takes issue, but we conclude that these statements were not improper and did not constitute prosecutorial misconduct. There would be no arguable merit to this claim.

Heredia has waived his right to raise non-jurisdictional defenses and arguments when he decided to plead guilty to the reduced charge of second-degree sexual assault/use of force. *See State v. Asmus*, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (a plea of guilty, knowingly and understandingly made, waives all non-jurisdictional arguments and defenses, including claimed violations of constitutional rights). Our independent review of the record also

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 Heredia.<sup>2</sup>

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 Heredia in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>2</sup> While this appeal was under submission, we received a letter from Heredia asking for a direct appeal to allow him to prove his innocence. The appeal currently before us is Heredia's direct appeal. As we have explained, however, we can find no issues of arguable merit. Therefore, we affirm the judgment convicting him of second-degree sexual assault.