



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

March 14, 2016

To:

Hon. Dennis P. Moroney
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

Patrick Flanagan
Flanagan Law Office, LLC
759 N. Milwaukee St., #215
Milwaukee, WI 53202-3714

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

Salah I. Salahadyn 182853
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2015AP1962-CRNM State of Wisconsin v. Salah I. Salahadyn (L.C. #2014CF518)

Before Kessler, Brennan and Brash, JJ.

Salah I. Salahadyn appeals a judgment convicting him of one count of robbery, as a party to a crime. Attorney Patrick Flanagan 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). Salahadyn 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

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

arguable merit that Salahadyn 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 Salahadyn’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 crime 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 questionnaire 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. Both Salahadyn and his lawyer told the circuit court that the agreement was accurately explained. The court informed Salahadyn that it was not required to follow the recommendation of either the prosecutor or Salahadyn’s lawyer and could sentence him up to the maximum prison term allowed by law. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Salahadyn said he understood.

The circuit court reviewed the maximum potential penalties Salahadyn faced and the elements of the crime. Salahadyn told the court that he understood. The court reviewed with Salahadyn on the record the constitutional rights he was waiving. The court also informed Salahadyn 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 Salahadyn had read and signed the plea questionnaire and waiver-of-rights form. The court also ascertained that Salahadyn had gone over the information on the plea questionnaire and waiver-of-rights form with his attorney and understood the information.

The circuit court asked Salahadyn whether he had reviewed the criminal complaint and whether it could use the facts alleged in the complaint as a basis for the plea. Salahadyn admitted that the facts alleged in the complaint were true and said that the court could use them as a basis for the plea. Based on the court's thorough plea colloquy with Salahadyn and Salahadyn'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. The court sentenced Salahadyn to twelve years of imprisonment, with seven years of initial confinement and five years of extended supervision. The court explained the reasons for its sentence in depth, considering both mitigating circumstances and aggravating circumstances. The court noted that Salahadyn had assisted police in recovering the stolen property, a highly valuable Stradivarius violin. However, the court also noted that Salahadyn justified committing the crime by saying he did it to get money to help other people, and looked negatively on the fact that Salahadyn had involved

others in his criminal plot. The court said that Salahadyn had no regard for the victim, who Salahadyn attacked in a parking lot. The court reasoned that incarceration was necessary so Salahadyn could get help addressing the manner in which he rationalized his actions and to punish him for his crime, particularly in light of his prior criminal history. 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 claim that Salahadyn'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 the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In the no-merit report, Attorney Flanagan states that there is nothing in the record to substantiate a claim that Salahadyn's trial lawyer was ineffective. Moreover, Salahadyn told the circuit court at the plea hearing that he was satisfied with his lawyer's representation. We conclude that there would be no arguable merit to this claim.

In his response to the no-merit report, Salahadyn argues his right to counsel under the Sixth Amendment was violated because “[t]he prosecutor insisted on choosing counsel for [him].” He asserts that the prosecutor sent two different lawyers, Louis Epps and Alejandro Lockwood, into the interview room to assist him in securing a pre-charge deal to locate the violin. Epps and Lockwood both work as public defenders, providing assistance to criminal defendants. They do not work for the prosecutor and they were not chosen by the prosecutor. There would be no arguable merit to this claim on appeal.

Salahadyn argues in his response that his trial lawyer ineffectively represented him by failing to determine whether he had been identified in the lineup before helping him to negotiate a deal to return the violin as part of a plea agreement. Salahadyn waived the right to raise this argument by entering his guilty plea. *See State v. Asmus*, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (a guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims). There would be no arguable merit to this claim.

Salahadyn next argues in his response that his right to due process was violated when the circuit court granted his trial lawyer's motion to withdraw without giving him notice of the motion and a meaningful opportunity to be heard. The court granted Alexander Lockwood's motion to withdraw on July 24, 2014, because Lockwood informed the court that he had a conflict of interest. Salahadyn had no right to be heard in the matter because a lawyer is prohibited from representing a client "if the representation involves a concurrent conflict of interest," absent certain exceptions. *See SCR 20:1.7*. Because Lockwood informed the court that he had a conflict of interest that prohibited him from continuing to represent Salahadyn, the court properly allowed him to withdraw regardless of Salahadyn's opinion about the matter. There would be no arguable merit to this claim.

Salahadyn next contends in his response that the prosecutor coerced him into entering a plea by placing his children in protective custody when he and Latoya Atlas, the children's mother, were arrested. The paramount goal of the Children's Code, WIS. STAT. ch. 48, is to *protect* children. *See WIS. STAT. § 48.01(1)(a)*. Children are placed in protective custody and proceedings are initiated to determine whether they are in need of protection and services when there is no adult to properly care for them. *See WIS. STAT. § 48.01(1)(bg)*. The prosecutor in Salahadyn's criminal case had no authority to determine whether his children should be found in

need of protections and services. That determination is made by a judge. *See* WIS. STAT. § 48.335(1). There would be no arguable merit to a claim that the prosecutor arranged for Salahadyn's children to be placed in protective custody to coerce him into entering a plea.

Salahadyn next argues in his response that the prosecutor did not keep his end of the plea agreement. Salahadyn contends that he led the police to the violin as promised, but the prosecutor intended to amend the charge from robbery to armed robbery if Salahadyn did not plead guilty and opted instead to go to trial. The agreement, as stated on the record during the plea colloquy, was that Salahadyn would return the violin *and* enter a guilty plea to robbery. In exchange, the prosecutor agreed to charge him with one count of robbery, as a party to a crime, and not issue any additional charges. If Salahadyn had decided to go to trial rather than plead guilty, *he* would have violated the plea agreement, thus leaving the prosecutor free to amend the charge to the more serious crime of armed robbery. There would be no arguable merit to a claim that the prosecutor did not honor the plea agreement.

Although not explicitly addressed in the no-merit report or the response, we have also considered whether there would be arguable merit to a claim that the circuit court improperly ordered Salahadyn to provide a DNA sample, if he had not done so already, and pay the DNA surcharge. The court explained that its order was designed to make it easier for the police to identify him if he engaged in criminal activity in the future and to deter him from committing crimes. Because the circuit court explained its exercise of discretion as required by *State v. Cherry*, 2008 WI App 80, ¶¶5-6, 312 Wis. 2d 203, 752 N.W.2d 393, there would be no arguable merit to an appellate challenge to the circuit court's decision to impose the DNA surcharge.

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

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 Patrick Flanagan is relieved of any further representation of Salahadyn in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals