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May 23, 2016

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

2015AP64-CRNM State of Wisconsin v. David A. Clark (L.C. #2013CF118)

Before Kessler, Brennan and Brash, JJ.

David A. Clark appeals a judgment convicting him of one count of fleeing an officer/damage to property and one count of misdemeanor possession of a controlled substance, both as a repeater. Attorney Katie Babe 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). Clark was informed of his right to file a response, but he has not done so. After

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

considering the no-merit report and independently reviewing the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that Clark 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 Clark did not knowingly, intelligently, and voluntarily enter his no-contest plea. Before accepting a plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08; *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court may refer to a plea questionnaire and waiver-of-rights form during the colloquy, which the defendant has reviewed and understood, thus 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). The colloquy and written plea questionnaire are designed to ensure that the defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a plea. *Brown*, 293 Wis. 2d 594, ¶35.

The circuit court began its colloquy by asking Clark about the plea questionnaire and waiver-of-rights form. Clark informed the court that he filled it out with his lawyer and understood the information on the form. The circuit court asked Clark whether he understood the constitutional rights he was giving up by entering a no-contest plea and the circuit court then reviewed the rights with Clark on the record. Clark said that he understood. The circuit court explained the elements of the crimes to Clark and explained the maximum penalties Clark faced by entering a plea. The circuit court also explained to Clark how repeater enhancers increased the potential penalties he faced. Clark said that he understood.

The circuit court ascertained that Clark was satisfied with his lawyer's representation and questioned him to ensure that he had the ability to understand the proceedings. The circuit court informed Clark that if he was not a citizen of the United States of America, he could be deported if he were found guilty of these crimes. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. Clark said that he understood this information. The circuit court asked Clark whether he had read the criminal complaint. Clark said that he did. The circuit court told Clark that by entering a no-contest plea, he was acknowledging that the State had sufficient evidence to convict him of the crimes, even though he was not acknowledging his guilt. The circuit court also told Clark that it would find him guilty if he pled no contest. Based on the circuit court's thorough plea colloquy with Clark, and Clark'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 an aggregate term of six years of imprisonment, with three years of initial confinement and three years of extended supervision. In framing its sentence, the circuit court placed emphasis on Clark's criminal history, including more than twenty prior convictions. The circuit court explained that Clark needed to be punished for his actions. The circuit court also considered Clark's need for rehabilitation, but frankly acknowledged that Clark's history of criminal behavior suggested that rehabilitation might not be likely. 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.

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

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 Katie Babe is relieved of any further representation of Clark in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals