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November 29, 2016

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

2016AP1469-CRNM State v. Luis Perez-Guillermo (L.C. # 2013CF1193)

Before Kessler, Brennan and Brash, JJ.

Luis Perez-Guillermo appeals a judgment convicting him of one count of second-degree intentional homicide, with use of a dangerous weapon, and one count of first-degree recklessly endangering safety. Attorney Mark S. Rosen 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). Perez-Guillermo was informed of his right to file a response, but he has not

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

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 Perez-Guillermo 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 Perez-Guillermo did not knowingly, intelligently, and voluntarily enter his 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 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).

A translator was present at all court proceedings, including the plea hearing, who translated from English to Spanish and Spanish to English because Perez-Guillermo does not understand English. The prosecutor stated the plea agreement on the record and both Perez-Guillermo and Perez-Guillermo’s lawyer informed the court that the plea agreement as stated by

the prosecutor was accurate. The circuit court explained to Perez-Guillermo that it was not bound by the plea agreement, and Perez-Guillermo told the court he understood.

The circuit court explained to Perez-Guillermo the maximum penalties he faced for each charge by entering a plea. Perez-Guillermo told the court that he understood. The circuit court informed Perez-Guillermo that if he was not a citizen of the United States of America, he could be deported if he pled guilty. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. Perez-Guillermo told the court that he understood. The circuit court asked Perez-Guillermo whether he had reviewed the complaint and the jury instructions, which listed the elements of the crimes, and whether he had reviewed the jury instructions with his lawyer. Perez-Guillermo said he had.

The circuit court reviewed with Perez-Guillermo the constitutional rights he was waiving and ascertained that Perez-Guillermo understood after the prosecutor read the elements of the crimes aloud in court. The circuit court asked Perez-Guillermo whether anyone had made promises to him in exchange for the plea and whether anyone had threatened him to get him to enter the plea. Perez-Guillermo said no one had made promises or threatened him. The circuit court asked Perez-Guillermo whether he had reviewed the plea questionnaire and waiver-of-rights form, and Perez-Guillermo said that he had. Based on the circuit court's thorough plea colloquy with Perez-Guillermo, and Perez-Guillermo'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's sentence was excessive or that the court otherwise misused its sentencing discretion when it imposed an aggregate term of forty-five years of imprisonment with thirty

years of initial confinement and fifteen years of extended supervision. In its sentencing remarks, the circuit court discussed at length the circumstances that led to these crimes: Perez-Guillermo shot and killed Daniel Perez (no relation) in a jealous rage in front of his wife and children, and was attacked by his two teenaged children to prevent Perez-Guillermo from harming their mother. The court considered the need to protect the community, the goals of rehabilitating Perez-Guillermo and deterring others from engaging in criminal conduct, and the seriousness of the offense. The court noted that Perez-Guillermo was remorseful, had accepted responsibility for his actions, and had been a productive member of society with no criminal history who took care of his family before he committed these crimes. The court also considered the aggravating circumstances that played a role in these crimes, including the fact that Perez-Guillermo had been drinking alcohol and shot Perez in front of his children, who were forced to intervene to prevent him from harming their mother. 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 also reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Mark S. Rosen from further representation of Perez-Guillermo.

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 Mark S. Rosen is relieved from any further representation of Perez-Guillermo in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals