



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 II

January 18, 2017

To:

Hon. Kathryn W. Foster
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Susan Lee Opper
District Attorney
515 W. Moreland Blvd. Rm. G-72
Waukesha, WI 53188-2486

Megan Sanders-Drazen
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Scott D. Wimer 246119
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2016AP524-CRNM State of Wisconsin v. Scott D. Wimer (L.C. # 2014CF771)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Scott D. Wimer appeals from an amended judgment convicting him of armed robbery as a repeater. Wimer's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Wimer filed a response. After reviewing the record, counsel's report, and Wimer's response, we conclude that there are

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Wimer was convicted following an *Alford*² plea to armed robbery as a repeater. According to complaint, Wimer entered a pharmacy seeking to fill a prescription for Oxycodone pills. The pharmacist informed Wimer that the prescription was invalid and could not be filled. Wimer responded by exiting the pharmacy, walking over to a vehicle, obtaining a shotgun from within the vehicle, and reentering the pharmacy with the shotgun in hand. Wimer then told the pharmacist, “You are going to fill my prescription right now,” which the pharmacist did. Wimer was eventually arrested following a standoff with police. For his actions, the circuit court sentenced Wimer to ten years of initial confinement followed by six years of extended supervision.

The no-merit report addresses whether Wimer’s *Alford* plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Wimer that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.³ In addition, a signed plea questionnaire and waiver of rights form was entered into the record. Finally, the court explained the effect of the *Alford* plea, and there was strong evidence of guilt to support it from both Wimer’s

² See *North Carolina v. Alford*, 400 U.S. 25 (1970).

³ There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Wimer’s plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization.

statements to the court and the unobjected to facts in the complaint. We agree with counsel that any challenge to the entry of Wimer's *Alford* plea would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offense, Wimer's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. As the sentence was well within the statutory maximum, it cannot be considered excessive. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.⁴

As noted, Wimer filed a response to counsel's no-merit report. In it, he suggests that his sentence was excessive and asserts that he took the pills without an intent to steal. We have already explained why a challenge to the circuit court's decision at sentencing would lack arguable merit. As for Wimer's assertion that he did not meet an element of the offense, he forfeited the right to make such an argument by virtue of his plea. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. For these reasons, we are not persuaded that Wimer's response presents an issue of arguable merit.

⁴ The circuit court mistakenly determined that Wimer was ineligible for the Substance Abuse Program. However, it later amended the judgment of conviction to correct this error.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Megan Sanders-Drazen of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of further representation of Wimer in this matter.

Diane M. Fremgen
Clerk of Court of Appeals