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**DISTRICT I**

January 27, 2017

To:

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Circuit Court Judge, Br. 15  
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Dontaye J. Richardson 295421  
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Sturtevant, WI 53177-0900

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

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2016AP1024-CRNM      State of Wisconsin v. Dontaye J. Richardson (L.C. # 2015CF3827)

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

Dontaye J. Richardson appeals a judgment convicting him of third-degree sexual assault and theft, both as a repeater. Attorney Leon W. Todd, III, 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). Richardson was advised of his right to respond, but he did not do so. After considering the no-merit report and conducting an independent review of the

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

record, we conclude that there are no issues of arguable merit that Richardson 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 arguable merit to a claim that Richardson should be allowed to withdraw his plea because it was not knowingly, intelligently and voluntarily entered. 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 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. The circuit court's colloquy with the defendant helps to ensure that the defendant is knowingly, intelligently, and voluntarily waiving the right to trial. *See State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. 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).

At the plea hearing, the prosecutor stated the plea agreement on the record and Richardson's lawyer informed the court that the plea agreement as stated by the prosecutor was accurate. The circuit court explained to Richardson the elements of the crimes and ascertained that he had been previously convicted of other offenses sufficient to qualify him as a repeater. The circuit court also explained the maximum penalties he faced for each charge by entering a plea. Richardson told the court that he understood.

The circuit court explained to Richardson that it did not have to follow the plea agreement and did not have to follow the recommendations of either Richardson's attorney or the prosecutor. Richardson said that he understood. The circuit court informed Richardson 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. Richardson told the court that he understood. The circuit court also informed Richardson that he could possibly be subject to future restrictions as a sexually violent offender under WIS. STAT. ch. 980 based on his third-degree sexual assault conviction, and Richardson said that he understood.

The circuit court reviewed with Richardson the constitutional rights he was waiving and ascertained that Richardson understood them. The circuit court asked Richardson 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. Richardson said no one had made promises or threatened him. The circuit court asked Richardson whether he had gone over the plea questionnaire and waiver-of-rights form with his attorney. Richardson said that he had and that his attorney had read the information on the form to him. Richardson's attorney also informed the court that he had reviewed the form with Richardson. Richardson informed the court that he had read the criminal complaint and had it read to him. Richardson said that the facts as alleged in the complaint were accurate and could serve as a factual basis for the plea. Based on the circuit court's thorough plea colloquy with Richardson, and Richardson'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 discretion when it sentenced Richardson. The circuit court imposed seven years of initial confinement and five years of extended supervision for the sexual assault

conviction and six years of initial confinement and five years of extended supervision for the theft conviction, both sentences to be served consecutively. In its sentencing remarks, the circuit court discussed Richardson’s prior criminal record and the predatory and controlling nature of his actions—attacking a young girl on the street in the late evening and then following her home after she fled to continue threatening her. The circuit court placed emphasis on the physical and emotional trauma the victim sustained and characterized Richardson’s brutal assault as among the most aggravated third-degree sexual assault cases the court had encountered. 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.

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 Leon W. Todd, III, from further representation of Richardson.

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 Leon W. Todd, III, is relieved of any further representation of Richardson in this matter. *See* WIS. STAT. RULE 809.32(3).

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