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March 31, 2017

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

2016AP2396-CRNM	State of Wisconsin v. Christopher Lanice Townsend (L.C. # 2016CF558)
2016AP2397-CRNM	State of Wisconsin v. Christopher Lanice Townsend (L.C. # 2016CF1216)

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

Christopher Lanice Townsend appeals judgments convicting him of felony substantial battery, misdemeanor battery, and misdemeanor theft. Attorney Russell J. A. Jones, who was appointed to represent Townsend, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738, 744

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(1967). Townsend was advised of his right to respond, but he has not 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 Townsend could raise on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Townsend should be allowed to withdraw his no-contest pleas because they were 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 and ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). The circuit court's colloquy with the defendant helps to ensure that the defendant is knowingly, intelligently, and voluntarily waiving the rights he is giving up by entering a plea. *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. As part of its inquiry, the circuit court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing, reducing "the extent and degree of the colloquy otherwise required between the [circuit] 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 circuit court explained to Townsend the elements of the crimes and the reason why the two battery counts were being charged as incidents of domestic abuse. The circuit court also explained to Townsend the maximum penalties he faced for each charge and informed him that although it would consider the joint recommendation presented at

sentencing pursuant to the plea agreement, it was not bound to follow that recommendation. Townsend told the court that he understood.

The circuit court asked Townsend whether he had gone over the plea questionnaire and waiver-of-rights form with his attorney and asked whether he had signed it. Townsend said that he had. The circuit court reviewed with Townsend the constitutional rights he was waiving by entering the no-contest pleas and ascertained that Townsend understood them. The circuit court informed Townsend that he was also giving up the right to raise any motions or defenses that he might have, and he said that he understood. The circuit court asked Townsend whether anyone had made promises to him in exchange for the pleas and whether anyone had threatened him to get him to enter the pleas. Townsend said no one had made promises or threatened him.

The circuit court reviewed the elements of each crime with Townsend to ensure that he understood them. The circuit court informed Townsend that if he was not a citizen of the United States of America, he could be deported if he entered pleas to the charges. *See* ***State v. Douangmala***, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. Townsend told the court that he understood. The circuit court ascertained that Townsend was pleading no-contest because he was intoxicated when the crimes occurred, and thus could not remember committing them, but he did not contest that he committed them. The circuit court asked Townsend's attorney whether the criminal complaints could serve as a basis for the pleas. Townsend's attorney said that they could. The circuit court also noted that pursuant to the plea agreement, three charges were dismissed and read in for the purpose of sentencing—one count of theft, one count of disorderly conduct, and one count of felony bail jumping. Based on the circuit court's thorough plea colloquy with Townsend, and Townsend's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the no-contest pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court imposed one year and six months of initial confinement and two years of extended supervision for substantial battery. The circuit court also imposed nine months in jail for misdemeanor battery and nine months in jail for theft, to be served concurrently to each other and to the sentence for substantial battery.

The circuit court imposed the sentence jointly recommended by the prosecution and the defense. Because Townsend affirmatively approved the sentence he received, he cannot attack it on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Therefore, there would be no arguable merit to a claim that the circuit court misused its sentencing discretion.

Our independent review of the record also reveals no arguable basis for reversing the judgments of conviction. Therefore, we affirm the judgments and relieve Attorney Jones from further representation of Townsend.

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Russell J. A. Jones, is relieved of any further representation of Townsend in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals