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August 18, 2017

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

2017AP64-CRNM State of Wisconsin v. Larry Clifton Shipp (L.C. # 2014CF4737)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Larry Clifton Shipp appeals a judgment convicting him of one count of armed robbery, as a party to a crime. Attorney Marcella De Peters 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.

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

738, 744 (1967). Shipp was advised of his right to respond, but he has not done so. After considering the no-merit report and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Shipp 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 Shipp 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 a plea questionnaire and waiver-of-rights form is “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 the 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 (quotation marks omitted).

During the plea hearing, the circuit court explained the elements of the crime to Shipp on the record, including what it meant to be charged as a party to a crime. The circuit court also informed Shipp of the maximum penalties he faced by entering a plea. The circuit court ascertained that Shipp had signed and reviewed the plea questionnaire and waiver-of-rights form and its attachments, with his lawyer. The form listed all of the constitutional rights Shipp was

waiving by entering a plea and listed potential defenses that Shipp was giving up by entering the plea. The circuit court also ascertained that Shipp understood the other information the form provided.

The circuit court informed Shipp 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. The circuit court ascertained that Shipp understood that it was not a party to the plea agreement and therefore was not obligated to follow the agreement. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court asked Shipp about his educational level and asked him whether medication he was taking interfered with his ability to understand the proceedings. Shipp said that it did not. The circuit court also asked Shipp whether he was satisfied with his lawyer's representation and whether his lawyer had answered all of his questions. Shipp said he had. The circuit court found a factual basis for the plea based on the complaint and the facts admitted by Shipp at the hearing. Based on the circuit court's thorough plea colloquy with Shipp, and Shipp'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 Shipp to sixteen years of imprisonment consisting of nine years of initial confinement and seven years of extended supervision. The circuit court considered the primary objectives of sentencing—protection of the community, punishment, rehabilitation and deterrence—in light of Shipp's crime and his personal circumstances and history. The circuit court said that Shipp had participated in an armed robbery that had a chilling effect on the entire community; in fact, as the father of the victims said at one point in the proceedings, it was the type of crime that made people afraid to come to Milwaukee.

The circuit court took into account that Shipp expressed remorse and was young but noted that he had been a major player among his co-defendants because he was the person with the gun. 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 De Peters from further representation of Shipp.

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 Marcella De Peters is relieved of any further representation of Shipp in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals