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**DISTRICT I**

August 25, 2017

To:

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Stanley, WI 54768

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

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2017AP434-CRNM      State of Wisconsin v. Adrian J. Guerrero (L.C. # 2015CF4359)

Before Kessler, Brash 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).**

Adrian J. Guerrero appeals a judgment convicting him of one count of armed robbery, as a party to a crime. Attorney George M. Tauscheck filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16),<sup>1</sup> and *Anders v. California*, 386 U.S.

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

738, 744 (1967). Guerrero was advised of his right to respond, but he has not done so. The no-merit report addresses: (1) whether Guerrero's guilty plea was knowingly, intelligently, and voluntarily entered; and (2) whether the circuit court misused its sentencing discretion. After conducting an independent review of the record, we conclude that there are no issues of arguable merit that Guerrero 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 Guerrero did not knowingly, intelligently, and voluntarily enter his guilty plea. Before accepting a guilty or no-contest plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crime(s) 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. The circuit court may refer to a plea questionnaire and waiver-of-rights form which the defendant has acknowledged reviewing and understanding, as part of its inquiry, thereby 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 (quoting another source). However, the plea questionnaire and waiver-of-rights form does not “eliminate the need for the court to make a record demonstrating the defendant’s understanding” of the consequences of the plea and the rights the defendant is waiving by entering the plea. *Id.* (quoting another source).

The circuit court conducted a colloquy with Guerrero that was sufficient to meet the requirements set forth in WIS. STAT. § 971.08. The circuit court read the elements of the crime to Guerrero at the plea hearing, and the court explained what it meant to be charged as a party to a

crime. Guerrero said he understood and acknowledged that he had reviewed with his lawyer what it meant to be charged as a party to a crime. The circuit court informed Guerrero that he faced a maximum prison term of forty years if he entered the plea. The plea questionnaire and waiver-of-rights form, which Guerrero acknowledged reviewing with his lawyer, informed Guerrero that he also faced a fine of up to \$100,000, thus fleshing out the penalty information that the circuit court did not provide. The circuit court personally reviewed with Guerrero a few of the constitutional rights he was waiving and asked Guerrero whether he had reviewed the constitutional rights listed on the plea questionnaire and waiver-of-rights form with his lawyer. Guerrero said that he had. The circuit court explained to Guerrero the defenses he was foregoing by entering a plea. Guerrero said that he understood.

The prosecutor explained the terms of the plea agreement to the circuit court, which was met with no objection by Guerrero or his lawyer. The circuit court informed Guerrero 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 Guerrero was eighteen years old and had completed eleven years of school. The circuit court asked Guerrero whether anyone had threatened him so that he would enter a plea. Guerrero said no one had.

Turning to the factual basis for the plea, the circuit court is required to “[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged.” WIS. STAT. § 971.08(1)(b). The complaint states that Guerrero admitted that he was driving his two codefendants when they committed multiple robberies. The circuit court stated that it would use the criminal complaint as a factual basis for the plea, but it did not ask Guerrero if that was acceptable or ask Guerrero if he admitted the facts as true. Although the circuit court did not ask

Guerrero whether the facts alleged in the complaint could serve as the basis for the plea, neither Guerrero nor his lawyer expressed any concern with the court doing so. We conclude that any potential violation of § 971.08(1)(b) would not be a basis for Guerrero to withdraw his plea because the circuit court could reasonably have satisfied itself that Guerrero committed the crime from other exchanges during the colloquy; for example, Guerrero indicated that he had read the complaint and that he wanted to plead guilty to the crime. In sum, then, we conclude that there would be no arguable merit to an appellate challenge to the plea based on the plea colloquy and Guerrero's review of the plea questionnaire and waiver-of-rights form.

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 Guerrero to fifteen years of imprisonment, consisting of nine years of initial confinement and six years of extended supervision. Although the circuit court's comments were brief, the court considered the primary objectives of sentencing: punishment, deterrence, rehabilitation and protection of the community. The circuit court said that although Guerrero was young and had no criminal record prior to the downward spiral that led to this conviction, there were multiple offenses that were dismissed and read-in that showed that Guerrero must be confined to protect the public. The circuit court noted that Guerrero was the getaway driver for a "string of armed robberies" that had serious effects on the victims, making them afraid when they walked on the street. The circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing objectives 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 Tauscheck from further representation of Guerrero.

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 George M. Tauscheck is relieved of further representation of Adrian J. Guerrero in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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