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June 13, 2018

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

2015AP2526-CRNM State of Wisconsin v. Davon M. Thompson (L.C. # 2014CF260)

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

Davon M. Thompson appeals a judgment convicting him of one count of first-degree reckless homicide, 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***

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

v. California, 386 U.S. 738, 744 (1967). Thompson was advised of his right to respond and has done so. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Thompson could raise on appeal. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether the circuit court erred in granting the State's motion to allow the victim's statements to his mother and the police naming Thompson as his assailant. The circuit court properly ruled that these statements could be admitted at trial because they constituted dying declarations, an exception to the hearsay rule. *See* WIS. STAT. § 908.045(3) (the hearsay rule does not bar a statement made by an unavailable declarant who believed that his or her death was imminent concerning the cause of the declarant's impending death). Moreover, Thompson waived his right to challenge this pretrial ruling when he opted to plead guilty. *See* ***State v. Asmus***, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (a guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims). Therefore, there would be no arguable merit to this claim.

The no-merit report next addresses whether there would be any basis for arguing that Thompson 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 the defendant to ascertain whether 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, thus 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 footnote omitted).

During the plea hearing, the circuit court explained the elements of the crime to Thompson, informed him of the maximum penalties he faced and reviewed the constitutional rights he was waiving by entering a plea. The circuit court ascertained that Thompson had reviewed the plea questionnaire and waiver-of-rights form with his trial counsel and understood the information on the form.

The circuit court informed Thompson 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 plea agreement was stated on the record and the circuit court ascertained that Thompson understood that it was not bound to follow the recommendations of the parties. *See* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court found a factual basis for the plea based on the complaint and the facts admitted by Thompson at the hearing. Based on the circuit court's thorough plea colloquy with Thompson, and Thompson's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the plea.

Finally, the no-merit report addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Thompson to forty-five years of imprisonment consisting of thirty years of initial confinement and fifteen years of extended

supervision. The circuit court considered the aggravating and mitigating circumstances of the case, and said that Thompson needed to be punished for senselessly killing the victim. The circuit court took into account that Thompson expressed remorse and took responsibility for his actions. The circuit court considered appropriate factors in deciding the length of sentence to impose and explained its decision 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 Thompson.

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 Davon M. Thompson in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals