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**DISTRICT I**

June 15, 2018

*To*:

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

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2016AP2086-CRNM State of Wisconsin v. Earnest McMiller (L.C. # 2015CF2988)

Before Kessler, P.J., 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).**

Earnest McMiller appeals a judgment convicting him of two counts of burglary, as a party to a crime. Attorney Pamela Moorshead 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). McMiller responded. 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 McMiller could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.[2]

The no-merit report first addresses whether there would be any basis for arguing that McMiller 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 his 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 "'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 a plea questionnaire and waiver-of-rights 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 crimes to McMiller on the record, including the meaning of being charged as a party to a crime. The

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[2] We placed this case on hold on August 2, 2017. We now lift the hold and decide the case.

circuit court also informed McMiller of the maximum penalties he faced by entering a plea. The circuit court personally reviewed with McMiller the constitutional rights he was waiving, and ascertained that McMiller had reviewed with his lawyer the plea questionnaire and waiver-of-rights form which listed all of the constitutional rights McMiller was waiving by entering a plea. In sum, the circuit court conducted a colloquy that fully complied with WIS. STAT. § 971.08, and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986) and its progeny. There would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there was a factual basis for the plea. The prosecutor detailed the facts that supported the charges on the record. The circuit court asked McMiller whether he admitted the facts as alleged and, with a few clarifications, McMiller told the circuit court that he admitted the facts on which the charges were based. Therefore, there would be no arguable merit to this claim.

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 McMiller to nine years of imprisonment on each count, consisting of four years of initial confinement and five years of extended supervision, to be served consecutively. The record establishes that the circuit court considered appropriate factors in deciding the length of the sentence, explaining the objectives of its sentence, and made a reasoned and reasonable sentencing decision. *See* ***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.

In his response to the no-merit report, McMiller argues that his trial counsel had a conflict of interest because she represented his co-defendant, Clarence H. Robinson. McMiller is

mistaken. Robinson was represented by Attorney Eugene E. Detert. McMiller also asserts that his trial counsel did not assist him with his case. Our independent review of the record shows that McMiller's counsel worked diligently on his behalf. There would be no arguable merit to these issues.

Our independent review of the record further reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve appellate counsel of further representation of McMiller.

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 Pamela Moorshead is relieved from any further representation of Earnest McMiller 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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*Sheila T. Reiff*
*Clerk of Court of Appeals*