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**DISTRICT I**

September 20, 2018

To:

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

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|-----------------|---|
| 2016AP1796-CRNM | State of Wisconsin v. Rickey Donelle Boyd (L.C. # 2014CF4197) |
| 2016AP1797-CRNM | State of Wisconsin v. Rickey Donelle Boyd (L.C. # 2015CF924)  |

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).**

Rickey Donelle Boyd appeals judgments convicting him of first-degree reckless homicide, possession of heroin with intent to deliver, and felon in possession of a firearm.

Attorney Pamela Moorshead 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. 738, 744 (1967). Boyd was informed of his right to respond, but he did not do 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 Boyd 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 any basis for arguing that Boyd did not knowingly, intelligently, and voluntarily enter his guilty pleas. 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 pleas, 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 the 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 a plea colloquy and waiver-of-rights 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 [circuit] court and the defendant.” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and internal quotation marks omitted).

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

During the plea hearing, the prosecutor stated the plea agreement on the record, and Boyd and his attorney both said it was in accord with their understanding. The circuit court told Boyd that it was not bound by what either the State or his lawyer recommended and could sentence him up to the maximum term of imprisonment. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Boyd said that he understood. The circuit court explained the elements of the crimes to Boyd, informed him of the maximum penalties he faced by pleading guilty to the charges, and personally reviewed the constitutional rights he was waiving. The circuit court also explained that Boyd was giving up the right to raise defenses to the charges by pleading guilty. Boyd informed the court that he understood each of the topics the circuit court addressed with him.

The circuit court informed Boyd that if he was not a citizen of the United States of America, he could be deported if he pled guilty to the crimes. *See WIS. STAT. § 971.08(1)(c)*. The circuit court asked Boyd about his education and whether he was taking any medicines or had any conditions that interfered with his understanding of the proceedings. Boyd said that he understood the proceedings and was taking medicine for a condition, but that the medicine did not affect his judgment or comprehension. The circuit court also informed Boyd that by pleading guilty he was giving up his right to raise any potential defenses to the charges. The circuit court ascertained that Boyd read the plea questionnaire and waiver-of-rights forms, reviewed them with his attorney, understood the information on the forms, and that Boyd signed them. Based on the circuit court's thorough plea colloquy with Boyd, and Boyd's review of the plea questionnaire and waiver-of-rights forms, there would be no arguable merit to an appellate challenge to the pleas.

The no-merit report next addresses whether there was a factual basis for the pleas. The circuit court asked Boyd whether he reviewed the criminal complaints and whether the facts alleged in the complaints could serve as the basis for his pleas. Boyd agreed that the complaints provided a factual basis for his pleas and said that the allegations in the complaint were true. Therefore, there would be no arguable merit to a claim that there was no factual basis for his pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion when it sentenced Boyd to twenty years of imprisonment for first-degree reckless homicide, with fifteen years of initial confinement and five years of extended supervision, and two terms of five years of imprisonment for possession of heroin and felon in possession of a firearm, the sentences for all three counts to be served concurrently. The circuit court explained that one of its goals in sentencing Boyd was deterrence. The court wanted to send a message to Boyd and to people like him that there are consequences for selling heroin and that he and others like him are responsible for the overdose deaths of their customers. The circuit court considered the seriousness of the offenses, noting that in this case the ultimate destructive consequence occurred—the person to whom Boyd was selling heroin overdosed and died. The circuit court said that Boyd was a danger to the community and needed to be incarcerated because the court did not trust him “not to get back involved in distributing heroin” due to his addiction. The court noted that heroin cravings can continue for years after an addict stops, and it could not trust Boyd to avoid using and selling during that period. The court said that its fifteen-year sentence was designed to remove Boyd from the community to make sure that he did not sell heroin to someone else, as well as to punish him for his actions. 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.

Although it was not addressed by the no-merit report, we conclude that there would be no arguable merit to a claim that the circuit court erred in imposing DNA surcharges on Boyd. The circuit court imposed a total of three \$250 surcharges on Boyd in the two separate cases, for a total of \$750 dollars. Because of the multiple DNA surcharges, we previously put these appeals on hold pending the Wisconsin Supreme Court's decision in *State v. Odom*, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The *Odom* appeal was voluntarily dismissed before oral argument. These cases were then held for a decision in *State v. Freiboth*, 2018 WI App 46, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_. *Freiboth* holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. *Id.*, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

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 Pamela Moorshead of further representation of Boyd.

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 Pamela Moorshead is relieved of any further representation of Boyd in these matters. *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*