



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

January 9, 2019

To:

Hon. Todd K. Martens  
Circuit Court Judge  
P.O. Box 1986  
West Bend, WI 53095

Theresa Russell  
Clerk of Circuit Court  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095-1986

Mark Bensen  
District Attorney  
Washington County  
P.O. Box 1986  
West Bend, WI 53095-1986

Bradley J. Lochowicz  
Seymour, Kremer, Koch, Lochowicz &  
Duquette  
P.O. Box 470  
Elkhorn, WI 53121-0470

Criminal Appeals Unit  
Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Steven Bruce Duncan 243172  
Oakhill Correctional Inst.  
P.O. Box 938  
Oregon, WI 53575-0938

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

---

2018AP523-CRNM      State of Wisconsin v. Steven Bruce Duncan (L.C. #2017CF185)

Before Reilly, P.J., Gundrum and Hagedorn, 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).**

Steven B. Duncan appeals from a judgment of conviction for possession with intent to deliver heroin, as a party to the crime. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Duncan

---

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

received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, the judgment is summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

As a result of a long investigation and surveillance of a drug distribution operation, eight people were charged with multiple drug crimes. Duncan served as an “errand boy” for the operation and procured pills and heroin as directed by the head of the operation. Duncan provided heroin during a controlled buy by a confidential informant. Duncan was charged with conspiracy to deliver heroin, conspiracy to deliver a controlled substance (Oxycodone), possession with intent to deliver a controlled substance (Oxycodone), as a party to the crime, and two counts of possession with intent to deliver heroin, as a party to the crime. Under a plea agreement, he pled guilty to possession with intent to deliver heroin in an amount of more than three grams but less than ten grams, as a party to the crime. The remaining charges were dismissed as read-ins at sentencing. The prosecution agreed to make a sentencing recommendation of six years of initial confinement and five years of extended supervision and did so at sentencing. Duncan was sentenced to five years of initial confinement and five years of extended supervision and made eligible for the Substance Abuse Program after serving thirty-six months of confinement.

The no-merit report addresses the potential issues of whether Duncan’s plea was knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an erroneous exercise of discretion. Our review of the record persuades us that no issue of arguable merit could arise from either point.

With one exception, the circuit court engaged in an appropriate colloquy with Duncan and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. To establish Duncan’s understanding of the waiver of his constitutional rights, the circuit court referenced the plea questionnaire Duncan had signed and obtained Duncan’s confirmation of understanding of his waiver. See *State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. The maximum penalty was stated on the record, and Duncan confirmed his understanding that the court was not bound by the recommendation of any party. The elements of the offense were reviewed with Duncan. During the plea colloquy the circuit court did not give Duncan the deportation warning required by § 971.08(2). However, the failure to give the warning is not grounds for relief because the record establishes that Duncan was born in the United States and Duncan could not show that his plea is likely to result in deportation. See *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1, *overruled on other grounds by State v. Fuerte*, 2017 WI 104, ¶36, 378 Wis. 2d 504, 904 N.W.2d 773. No issue of arguable merit arises from the taking of the plea.

With regard to the sentence, the record reveals that the sentencing court’s discretionary decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to the seriousness of the offense and the impact drug dealing has on the community, Duncan’s character, and the need to send a message of deterrence. *Id.*, ¶40 (the basic objectives of the sentence include “the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others”). Further, we cannot conclude that the ten-year sentence when measured against the maximum fifteen-year sentence is so excessive or

unusual so as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). No meritorious challenge to the sentence exists.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Duncan further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved from further representing Steven B. Duncan in this appeal. *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*