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DISTRICT I

August 12, 2019

To:

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

2019AP317-CRNM State of Wisconsin v. Michael O. Carter (L.C. # 2017CF4907)

Before Brash, P.J., Brennan 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).

Michael O. Carter appeals a judgment convicting him of one count of armed robbery. Appointed appellate counsel Bradley J. Lochowicz filed a no-merit report seeking to withdraw as

appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Carter was advised 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 Carter could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court sentenced Carter to seven years of imprisonment, with three years of initial confinement and four years of extended supervision. The court also ruled that Carter was not eligible for the Challenge Incarceration or Early Release Program. The circuit court considered the objectives of sentencing in deciding what length of sentence to impose and explained its application of the sentencing factors to the facts of this case 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.

The no-merit report next addresses whether there would be arguable merit to a claim that Carter's guilty plea was not knowingly, intelligently, and voluntarily entered. The circuit court must conduct a colloquy with a defendant before accepting a guilty plea to ensure that the defendant is knowingly, intelligently, and voluntarily waiving the right to trial. *See State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Before accepting a plea, the circuit court must ascertain that the defendant understands the elements of the crime to which he

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

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. As part of its inquiry, the circuit court may refer to a plea colloquy 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 one set of quotation marks omitted). The circuit court’s plea colloquy with Carter apprised him of the rights he was waiving by entering his plea and the consequences of his plea in accord with § 971.08 and *Brown*, 293 Wis. 2d 594, ¶35. Therefore, there would be no arguable merit to an appellate challenge to his plea.

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 Lochowicz from further representation of Carter.

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 Bradley J. Lochowicz is relieved of any further representation of Carter 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