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June 2, 2020

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

2018AP1312-CRNM State of Wisconsin v. Daryll D. Downey (L.C. # 2014CF4399)

Before Dugan, Donald and White, 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).

Daryll D. Downey appeals a judgment convicting him of unlawful possession of a firearm by a person previously convicted of a felony. Attorney Eileen T. Evans 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). Downey was advised of his right to respond,

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

but he has not done 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 Downey could raise on appeal. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Downey's guilty plea was knowingly, intelligently, and voluntarily entered. 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. A plea questionnaire and waiver-of-rights form that the defendant has acknowledged reviewing and understanding may reduce "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 omitted). Based on the circuit court's thorough plea colloquy with Downey and Downey's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenged to the plea.

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 Downey. The circuit court sentenced Downey to thirty months of initial confinement and forty-two months of extended supervision, to be served consecutively to a sentence Downey was already serving. The sentence was well within the maximum allowed sentence of five years of initial incarceration and five years of extended supervision for this class G felony. The circuit court considered the gravity of the offense, Downey's character, and the need to protect the public.

The circuit court also 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 reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment.

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 Eileen T. Evans is relieved of any further representation of Daryll D. Downey 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