

merit report. *See* WIS. STAT. RULE 809.32 (2019-20),² and *Anders v. California*, 386 U.S. 738, 744 (1967). Lockhart filed a response. After considering the no-merit report and the response, and after conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that Lockhart could raise on appeal. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Lockhart and his accomplices robbed two people at gunpoint after breaking into their home. Lockhart was charged with two counts of armed robbery, as a party to a crime, and one count of burglary, as a party to a crime. Lockhart went to trial on the charges but the circuit court declared a mistrial. Lockhart then entered a guilty plea to one count of armed robbery and the remaining charges were dismissed and read in at sentencing pursuant to a plea agreement. The circuit court sentenced Lockhart to five years of initial confinement and five years of extended supervision, to be served consecutively to any other sentence. Lockhart moved for postconviction relief, arguing that he received ineffective assistance of trial counsel. The circuit court denied the motion.

The no-merit report and Lockhart's response address whether Lockhart'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 crime 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,

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

among other things. See WIS. STAT. § 971.08; *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 depth of questioning required during the circuit court’s plea colloquy. *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794. Based on the circuit court’s thorough plea colloquy with Lockhart and Lockhart’s review of the plea questionnaire and waiver of rights form, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Lockhart. The circuit court sentenced Lockhart to ten years of imprisonment, with five years of initial confinement and five years of extended supervision, to be served consecutively to any other sentence Lockhart was already serving. The circuit court characterized Lockhart’s actions as “devastatingly wrong” and “absolutely atrocious.” The circuit court 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.

The no-merit report and Lockhart’s response address whether the circuit court erred in denying Lockhart’s postconviction motion alleging that he received ineffective assistance of trial counsel. Lockhart alleged that he was forced to enter a plea to the charge because his counsel miscommunicated the plea offer to him and allegedly showed up on the day of the scheduled trial smelling of alcohol.

After the circuit court held an evidentiary hearing on the motion, the circuit court found that Lockhart was “completely dishonest” when he testified. The circuit court noted that the error counsel had made regarding the plea offer was corrected *before* Lockhart decided to accept the plea agreement. The circuit court also pointed out that Lockhart did not raise his concerns during the plea colloquy. In addition, the circuit court found that trial counsel’s testimony was truthful and honest. “When the circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness’s testimony.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. Because the circuit court rejected Lockhart’s claims based on its credibility determination, there would be no arguable merit to a claim that Lockhart received ineffective assistance of trial counsel.

In his response, Lockhart argues that his trial counsel should have asserted his right to a prompt disposition under WIS. STAT. § 971.11, which addresses the disposition of intrastate detainees. Lockhart pled guilty to the charge against him. This claim was waived by Lockhart’s guilty plea. *See State v. Asmus*, 2010 WI App 48, ¶¶1, 4, 324 Wis. 2d 427, 782 N.W.2d 435 (a guilty plea waives all non-jurisdictional defects and defenses).

In his response, Lockhart argues that he received ineffective assistance of postconviction counsel during the postconviction motion hearing. Lockhart contends that postconviction counsel was intimidated by the circuit court. The record of the hearing belies this claim. Our review of the postconviction motion hearing transcript does not support Lockhart’s assertion that postconviction counsel was intimidated by the circuit court. Postconviction counsel’s representation of Lockhart was exemplary. Therefore, we conclude that there would be no arguable merit to this claim.

Finally, while this appeal was pending, Lockhart submitted a letter indicating that he wished to negotiate with this court and would be willing to dismiss this appeal if his sentence was modified to run concurrently with his revocation sentence in a different case. Lockhart misunderstands the function of this court. We do not engage in negotiations with appellants and we do not modify sentences.

Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction and order denying postconviction relief.

Accordingly,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved of any further representation of Lockhart 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