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**DISTRICT I**

December 13, 2022

To:

Hon. Joseph R. Wall  
Circuit Court Judge  
Electronic Notice

George Christenson  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

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Pamela Moorshead  
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Jesus U. Medina 683680  
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Redgranite, WI 54970-0925

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

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2021AP1872-CRNM      State of Wisconsin v. Jesus U. Medina (L.C. # 2017CF4450)

Before Brash, C.J., Donald, P.J., and Dugan, J.

Jesus U. Medina appeals from a judgment, entered upon his guilty plea, convicting him of first-degree reckless homicide (delivery of drugs-Len Bias Law). Appellate counsel, Pamela Moorshead, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> Medina has filed a response to counsel's report, and counsel has filed a supplemental report. Upon this court's independent review of the record as mandated by *Anders*, counsel's reports, and Medina's response, we conclude that there are no

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgment.

The State charged Medina with two counts of delivery of a Schedule I or II controlled substance (Fentanyl), one count of possession of Fentanyl with intent to deliver, and one count of possession of Cocaine with intent to deliver. The State filed an amended information adding one count of first-degree reckless homicide (delivery of drugs-Len Bias Law). The charges stemmed from an overdose death and two subsequent controlled buys.

The matter was ultimately resolved by a plea agreement, whereby Medina pled guilty to the reckless homicide charge and the remaining charges were dismissed and read in. The circuit court conducted a plea colloquy, accepted Medina's guilty plea, and found him guilty. The circuit court sentenced Medina to twenty years of imprisonment, bifurcated as fifteen years of initial confinement and five years of extended supervision. The parties stipulated to a restitution amount.

The no-merit report addresses the potential issues of whether Medina's plea was valid, whether there was a factual basis for his plea, and whether the circuit court erroneously exercised its sentencing discretion. In his response, Medina contends that his plea was not knowing, voluntary, or intelligent, that counsel was ineffective, and that the circuit court did not adequately consider his character with regard to his parenting at sentencing.

We agree with appellate counsel that there is no arguable merit to a claim that Medina's plea was invalid. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). The circuit court established at the plea hearing that Medina understood the nature of the crime to which he was pleading guilty, the penalty he faced, and the constitutional rights he was waiving

by entering his plea. The circuit court also established that Medina signed a guilty plea questionnaire/waiver of rights form and an addendum and that Medina understood the contents of those documents. See *State v. Pegeese*, 2019 WI 60, ¶¶36-37, 387 Wis. 2d 119, 928 N.W.2d 590. The circuit court also conducted a colloquy with Medina that complied with its obligations when accepting guilty pleas. See *id.*, ¶23; see also *Bangert*, 131 Wis. 2d at 266-72, WIS. STAT. § 971.08.

Medina contends that his plea was not knowing, voluntary, or intelligent because he did not fully understand the English language and because trial counsel was ineffective. As to the first claim, a review of the plea hearing transcript indicates that the circuit court confirmed Medina's understanding of the proceedings, confirmed that Medina could read and write English, asked Medina whether there were any parts of the proceeding that he did not understand, and told Medina that he could confer with counsel at any time during the proceedings if he needed a break. Medina told the circuit court that he understood the proceedings and at no point did Medina attempt to seek further clarification from counsel. Appellate counsel's supplemental no-merit report also notes that Medina did not request a translator at any point, that appellate counsel was able to communicate effectively with Medina in English, and that she did not have any concerns about Medina's ability to comprehend his case.

Medina's ineffective assistance of counsel claim is based, in part, on his allegation that counsel failed to provide him with complete discovery materials. The requirements for showing ineffective assistance of counsel are well-established; a defendant must show that counsel's performance was deficient and that the deficiency prejudiced the defense. See *State v. Balliette*, 2011 WI 79, ¶21, 336 Wis. 2d 358, 805 N.W.2d 334. "Whether counsel was ineffective is a mixed question of fact and law." *Id.*, ¶19. The defendant must show both elements of the test,

and we need not address both prongs if the defendant fails to make a sufficient showing on one of them. See *State v. Maloney*, 2005 WI 74, ¶14, 281 Wis. 2d 595, 698 N.W.2d 583.

We agree with appellate counsel that Medina does not explain what information from discovery was unknown to him and how that would have affected his plea decision. Moreover, Medina has failed to establish that any allegedly missing information prejudiced his case. To the extent Medina raises additional ineffective assistance of counsel claims, we agree with appellate counsel that Medina has failed to establish prejudice. Accordingly, further pursuit of an argument that Medina's pleas were anything other than knowing, voluntary, or intelligent would lack arguable merit within the meaning of *Anders*.

Appellate counsel's no-merit report next addresses whether the circuit court established a factual basis for accepting Medina's plea. At the plea hearing the circuit court asked the State to recite the facts resulting in the reckless homicide charge. Medina agreed with the State's recitation of the facts. Defense counsel then agreed that the circuit court could accept those facts as the factual basis for Medina's plea. Accordingly, there would be no arguable merit to a claim that the circuit court failed to establish a factual basis for accepting Medina's plea.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. See *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court

should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court’s discretion. See *id.*

Our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors, focusing particularly on the gravity of the offense and deterrence. Contrary to Medina’s claim, the circuit court did adequately consider Medina’s character and addressed Medina’s parenting. The circuit court discussed Medina’s education, his positive history of employment, and his family support, among other things. The circuit court also considered Medina’s contention that he became involved in the drug trade to pay for representation in a custody matter, noting that “[i]t’s completely upside down that [Medina] got [himself] involved in a deadly business ... purportedly for the purpose of the welfare of your children.”

The resulting sentence was within the maximum authorized by law. See *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was not so excessive so as to shock the public’s sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the circuit court’s sentencing discretion.

Our independent review of the record prompts us to address two other matters that the no-merit report does not discuss. First, although the complaint properly identified the initial charges and the penalties that Medina initially faced, the court commissioner did not personally inform him of those penalties at his initial appearance. See WIS. STAT. § 970.02(1)(a); see also

*State v. Thompson*, 2012 WI 90, ¶62, 342 Wis. 2d 674, 818 N.W.2d 904 (setting forth a judge’s mandatory duties under § 970.02(1)(a), including: “In the case of a felony, the judge *shall* personally inform the defendant of the penalties for the felony or felonies with which the defendant is charged.”). However, the entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. Consequently, there would be no arguable merit to a challenge on this basis.

Second, the no-merit report does not address restitution presumably because the parties stipulated to restitution at a hearing on the matter. Accordingly, there would be no arguable merit to a challenge on this basis.

Upon the foregoing therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of further representation of Jesus U. Medina in this matter. *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*