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**DISTRICT II**

January 30, 2013

To:

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Circuit Court Judge  
Racine County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2011AP3008-CRNM      State of Wisconsin v. Randy R. Fought (L.C. # 2010CF1565)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Randy R. Fought appeals from a judgment convicting him of burglary of a building or dwelling as a party to a crime and as a repeat offender. Fought's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2009-10)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Fought filed a response. After reviewing the record, counsel's no-merit report, and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version.

Fought's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Fought's plea of no contest was knowingly, intelligently, and voluntarily entered; and (2) whether the circuit court erroneously exercised its discretion at sentencing.

With respect to the entry of the no contest plea, the record shows that the circuit court engaged in a colloquy with Fought that satisfied the requirements of WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Fought's no contest plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing a sentence of four years of imprisonment, the court considered the seriousness of the offense, Fought's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the fact that Fought had been recently released on extended supervision for another felony, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Fought's sentence would lack arguable merit.

As noted, Fought filed a response to counsel's no-merit report. In it, he complains that he was punished more severely than his codefendant, Nathan D. Walling.<sup>2</sup> Although this may be true, there were notable differences in the men's culpability and backgrounds. See *State v. Toliver*, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994) ("A mere disparity between the sentences of co-defendants is not improper if the individual sentences are based upon individual culpability and the need for rehabilitation.") As the State explained at sentencing, Fought had been recently released on extended supervision for another felony, which meant that he had more at stake in this matter than Walling. Furthermore, the victim of the burglary, Unco Industries, believed that Fought was the one who provided the means for the burglary.<sup>3</sup> These differences justified the different punishments imposed.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Scott A. Szabrowicz of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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<sup>2</sup> Fought alleges, and our review of circuit court docket entries confirms, that Walling was convicted of theft of movable property less than or equal to \$2500, which is a Class A misdemeanor.

<sup>3</sup> This was not an unreasonable belief, as Fought had been previously employed at Unco Industries.

IT IS FURTHER ORDERED that Attorney Scott A. Szabrowicz is relieved of further representation of Fought in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*