

merit report and the response, and after conducting an independent review of the record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to an appellate challenge to Barnes's guilty plea. The plea colloquy complied in all respects with the requirements of WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis.2d 246, 266-72, 389 N.W.2d 12 (1986). The circuit court addressed whether Barnes understood the charges against him, the maximum penalties he faced, and the constitutional rights he would be waiving by entering a plea. The plea agreement was stated on the record, and Barnes acknowledged that he understood it. The circuit court ascertained that Barnes had reviewed a plea questionnaire and waiver-of-rights form with his attorney and that he understood the information explained on that form. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Barnes stipulated that the complaint and his testimony in the case of a co-defendant provided a factual basis for the charges. We therefore conclude that there would be no arguable merit to an appellate challenge involving the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the sentence imposed on Barnes was unduly harsh or excessive. The circuit court sentenced Barnes to an aggregate term of fifty years of imprisonment, with forty years of initial confinement and ten years of extended supervision. In framing its sentence, the circuit court stated this was one of the most horrific cases it had ever seen, if not the most horrific case, in fifteen years on the bench. Barnes participated in the brutal murder of a woman and her two small children, and then murdered a co-defendant. The circuit court considered a host of factors pertinent to the sentencing decision, giving credit to Barnes for his assistance in helping to

convict a co-defendant, but held him accountable for his heinous actions. The circuit court explained its application of the various sentencing considerations 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, we conclude that there would be no arguable merit to a challenge to the sentence on appeal.

The no-merit report next addresses whether there would be any basis to seek sentence modification. Barnes's attorney states that he asked Barnes for information that might support a motion for sentence modification, but that Barnes was unable to provide him with any such information. Our independent review of the record does not show any basis for a sentence modification motion. Therefore, we conclude that there would be no arguable merit to a claim that Barnes is entitled to sentence modification.

In his response, Barnes argues that he was denied the effective assistance of counsel because his attorney did not seek to suppress his inculpatory statement. Barnes's attorney moved to suppress his statement to police, but Barnes decided to plead guilty, availing himself of a generous plea bargain. When he entered the plea, Barnes waived his right to have the circuit court decide his motion to suppress. See *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994) (a valid guilty plea waives all non-jurisdictional defects and defenses, including challenges based on alleged constitutional violations). The plea questionnaire and waiver-of-rights form explicitly stated that Barnes would be waiving his right to argue that his statement to police should be suppressed. Barnes acknowledged during the plea colloquy that he read the form, that he understood it, and that he signed it. Therefore, there would be no arguable merit to a claim that Barnes was denied the effective assistance of counsel because his attorney did not seek to suppress his statements to the police.

Barnes also argues in his response that he should be allowed to withdraw his plea because the circuit court failed to determine that he understood the elements of first-degree reckless homicide. This claim is belied by the record. The elements of first-degree reckless homicide were attached to the plea questionnaire and waiver-of-rights form. As indicated above, the circuit court ascertained that Barnes had reviewed the form with his attorney and understood it. Moreover, the circuit court asked Barnes directly whether he understood that he was charged with first-degree reckless homicide, explaining the elements of the crime, and asked whether he had any questions. There would be no arguable merit to a claim that Barnes should be allowed to withdraw his plea because the circuit court failed to determine that he understood the elements of first-degree reckless homicide.

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

IT IS FURTHER ORDERED that Attorney Michael J. Backes is relieved of any further representation of Barnes in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals