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**DISTRICT I**

February 26, 2013

To:

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

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2012AP1588-CRNM      State of Wisconsin v. Nathan Lee Rose (L.C. #2011CF64)

Before Curley, P.J., Kessler and Brennan, JJ.

Nathan Lee Rose appeals a judgment convicting him of two counts of first-degree recklessly endangering safety with a dangerous weapon, with an enhancer for domestic abuse. He also appeals an order denying his motion to vacate a DNA surcharge. Attorney Hannah Blair Schieber filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). After considering the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Rose could raise on appeal. Therefore, we summarily affirm the judgment of conviction and the order denying postconviction relief. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Rose's guilty plea was made voluntarily, knowingly, and intelligently. 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 Rose understood the elements of the charge against him, the potential maximum penalties he faced and the constitutional rights he would be waiving by entering a plea, which were listed on a plea questionnaire and waiver-of-rights form. The plea agreement was stated on the record and the circuit court ascertained that Rose understood the agreement. The circuit court informed Rose that he could be deported after conviction if he was not a U.S. citizen and asked Rose whether he had reviewed and understood the plea questionnaire and waiver-of-rights form. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Rose admitted the facts in the complaint, which provided a factual basis for the charge. In light of these circumstances, there would be no arguable merit to an appellate argument that the plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Rose to ten years and six months of imprisonment on each count, with five years and six months of initial confinement and five years

of extended supervision, to be served concurrently.<sup>2</sup> The circuit court explained that Rose needed a confined setting given the dangerousness of his actions, which could have resulted in serious injury or death to the victims, and his need for substance abuse and mental health treatment. 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, there would be no arguable merit to a challenge to the sentence on appeal.

Finally, the no-merit report addresses whether the circuit court erred in denying Rose's postconviction motion to vacate the DNA surcharge because the circuit court did not provide an adequate explanation for imposing it as required by *State v. Cherry*, 2008 WI App 80, ¶10, 312 Wis. 2d 203, 752 N.W.2d 393. The circuit court explained that it imposed the surcharge because Rose committed two serious crimes that could have resulted in injury or death to the victims and imposing the surcharge would require Rose give back to the system for his actions, rather than forcing the taxpayers to carry the financial burden of the testing. The circuit court's explanation is adequate under *Cherry*. *See id.* There would be no arguable merit to a claim that the circuit court erred in denying the motion to vacate the surcharge.

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

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<sup>2</sup> The circuit court initially sentenced Rose to five years and six months of extended supervision, but changed the extended supervision term to five years after the Department of Corrections asked for clarification. Pursuant to WIS. STAT. § 973.01(2)(d)4., the maximum term of extended supervision for a Class F felony is five years.

judgment and order, and relieve Attorney Hannah Blair Schieber of further representation of Rose.

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 Hannah Blair Schieber is relieved of any further representation of Rose in this matter. *See* WIS. STAT. RULE 809.32(3).

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