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DISTRICT I

April 1, 2013

To:

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

2012AP479-CRNM State of Wisconsin v. George Lucas (L.C. #2011CF1265)

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

George Lucas appeals a judgment convicting him of one count of armed robbery with use of force, as a party to a crime. Attorney Michael J. Backes filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Lucas responded to the report, and Attorney Backes filed a supplemental no-merit report. After considering the no-merit report, the response, and the

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

supplemental no-merit report, 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 Lucas's guilty plea was knowingly, intelligently, and voluntarily entered. 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 prosecutor explained the plea agreement on the record and Lucas acknowledged that he understood the agreement. The circuit court addressed whether Lucas knew the penalties he faced and the constitutional rights he would be waiving by entering a plea. The circuit court also ascertained that Lucas had reviewed a plea questionnaire and waiver-of-rights form with his attorney, and that he understood the information explained on that form, which included the elements for armed robbery and party-to-a-crime liability. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Lucas admitted the factual basis for the charge. We therefore conclude that 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 sentencing discretion by imposing a sentence that was unduly harsh. The circuit court sentenced Lucas to seventeen years of imprisonment, with seven years of initial confinement and ten years of extended supervision. In imposing sentence, the circuit court considered the gravity of the offense, Lucas's character and the need to protect the community. Where, as here, the circuit court explains 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, and reaches a decision that is both reasoned and reasonable, we

will affirm the circuit court's exercise of sentencing discretion. Therefore, we conclude that there would be no arguable merit to a challenge to the sentence on appeal.

The no-merit report addresses whether there would be arguable merit to a claim that Lucas is entitled to sentence modification due to the existence of a new factor. Counsel explains that Lucas was unable to provide him with any information that would support a motion for sentence modification based on a new factor. This issue therefore lacks arguable merit.

In his response, Lucas argues that his sentence should be modified because the circuit court intended that he have the opportunity to participate in the Earned Release Program, but the Department of Corrections has found him ineligible for the program. We first note that it is unclear based on the documents before us whether the Department of Corrections has found Lucas ineligible for the program. Assuming for the sake of argument that the documents Lucas has presented to us in his response show that the Department of Corrections has found him ineligible for the program at this time, we conclude that this fact would not provide grounds for sentence modification. The circuit court mentioned the Earned Release Program as a possibility for Lucas in its sentencing remarks. However, the circuit court did not indicate that it based the length of Lucas's sentence on the assumption that Lucas would get into, or successfully complete, the Earned Release Program. The circuit court said that it was making Lucas "eligible" for the program, making it clear that the circuit court judge knew when he sentenced Lucas that the Department of Corrections could deny Lucas a spot in the program for administrative reasons. While the circuit court may have wanted Lucas to have the opportunity to participate in the program, its sentence was not premised on the belief that Lucas would definitely be able to participate. Therefore, we conclude that there is no arguable merit to a

claim that Lucas's sentence should be modified because the Department of Corrections has decided that Lucas is not now eligible for the Earned Release Program.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment of conviction and relieve Michael J. Backes of further representation of Lucas.

Accordingly,

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 Lucas in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals