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**DISTRICT I/II**

May 8, 2013

To:

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

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2012AP1873-CRNM	State of Wisconsin v. Tony Mora (L.C. # 2010CF2445)
2012AP1874-CRNM	State of Wisconsin v. Tony Mora (L.C. # 2010CF3144)

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

In these consolidated appeals, Tony Mora appeals from judgments convicting him of burglary contrary to WIS. STAT. § 943.10(1m)(a) (2009-10)<sup>1</sup> and armed robbery with use of force

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

and as party to the crime contrary to §§ 943.32(2) and 939.05. Mora's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Mora received a copy of the report and has filed a response to it. Upon consideration of the report, Mora's response and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Mora's guilty pleas were knowingly, voluntarily and intelligently entered and had a factual basis and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of the guilty pleas, Mora answered questions about the pleas and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Mora's guilty pleas were knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Mora signed is competent evidence of knowing and voluntary pleas. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Mora's guilty pleas.

With regard to the sentences, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Mora to concurrent terms: a seven-year term for burglary and a twenty-two-year term for armed robbery. In fashioning the sentences, the court considered the seriousness of the offenses, Mora's character and lengthy history of other offenses and gang involvement, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The felony sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. The circuit court required Mora to pay the DNA surcharge under WIS. STAT. § 973.046 and stated reasons for this discretionary decision. *State v. Cherry*, 2008 WI App 80, ¶¶8-9, 312 Wis. 2d 203, 752 N.W.2d 393. The restitution award was proper. No issue of arguable merit could arise from a challenge to the sentences.

In his response to counsel's no-merit report, Mora argues that the armed robbery should have been charged as party to the crime. The information reveals that the armed robbery was charged as party to the crime. Mora also argues that he did not commit armed robbery. During the plea colloquy, Mora affirmed that the allegations in the complaints were true and that the complaints provided the factual basis for the pleas. The armed robbery complaint was sufficient. We discern no issue with arguable merit for appeal.

Mora argues that the presentence investigation report was inaccurate, and his trial counsel did not effectively challenge the presentence investigation report. At sentencing, trial counsel objected to the presentence investigation report on the grounds that it relied upon statements from a detective about Mora's gang involvement and reported what counsel deemed to be

irrelevant forfeiture tickets. The circuit court offered to adjourn the sentencing so that the detective could appear at sentencing. After consulting with Mora, trial counsel reported that he and Mora declined to require the detective to appear. Thereafter, the circuit court declined to strike the portions of the presentence investigation report to which Mora objected.

We see no arguable issue for appeal. Counsel and Mora consulted about whether to have the detective appear at sentencing, and they decided against it.

Mora next argues that the circuit court considered inaccurate information at sentencing as a result of the detective's unchallenged statements in the presentence investigation report. The detective's statements related to Mora's gang membership. Mora admitted his gang membership to the presentence investigation report author. Mora's admission was not included in counsel's objections to the presentence investigation report. At sentencing, the circuit court properly considered that Mora was a gang member. We see no arguable issue for appeal.

Mora contends that he did not know that his coactor possessed a weapon. However, Mora told the presentence investigation report author the opposite: he knew his coactor had a weapon when they committed the armed robbery, although he did not know that his coactor was going to shoot at a store employee after they stole some beer. This issue does not have arguable merit for appeal.

Mora argues that the circuit court misused its sentencing discretion because the court did not consider his substance abuse issues and that he did not use the weapon in the armed robbery. As we held above, the sentence was a proper exercise of sentencing discretion. The circuit court acknowledged at sentencing that Mora did not fire the weapon and that he has substance abuse

issues. The weight of these factors was for the circuit court to determine. *State v. Steele*, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112.

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, affirm the judgments of conviction and relieve Attorney John Breffeilh of further representation of Mora in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney John Breffeilh is relieved of further representation of Tony Mora in this matter.

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