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**DISTRICT I/II**

May 15, 2013

To:

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

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2012AP975-CRNM      State of Wisconsin v. Matthew D. Fisher (L.C. # 2011CF2072)

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

Matthew Fisher appeals from a judgment convicting him of possessing a controlled substance (heroin) contrary to WIS. STAT. § 961.41(3g)(am) (2011-12).<sup>1</sup> Fisher'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). Fisher received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an

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

independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment 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 Fisher's guilty plea was knowingly, voluntarily and intelligently entered and had a factual basis; and (2) whether the circuit court misused its sentencing discretion when it sentenced Fisher to 300 days in the House of Correction. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of the guilty plea, Fisher answered questions about the plea 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 Fisher's guilty plea was knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that the plea 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 Fisher signed is competent evidence of a knowing and voluntary plea. *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 Fisher's guilty plea.

With regard to the sentence, 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. The court adequately discussed the facts and factors relevant to sentencing Fisher to a 300-day term in the House of Correction. In fashioning the sentence, the court considered the seriousness of the offense, Fisher's character and history of other offenses, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

The circuit court directed Fisher to provide a DNA sample pursuant to WIS. STAT. § 973.047 and pay the DNA surcharge pursuant to WIS. STAT. § 973.046, if he had not already done so, as punishment for his crime. We see no misuse of the circuit court's discretion. *State v. Long*, 2011 WI App 146, ¶8, 337 Wis. 2d 648, 807 N.W.2d 12, *review denied*, 2012 WI 45, 340 Wis. 2d 541, 811 N.W.2d 818.

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 judgment of conviction and relieve Attorney Steven Cotter of further representation of Fisher 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.

IT IS FURTHER ORDERED that Attorney Steven Cotter is relieved of further representation of Matthew Fisher in this matter.

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