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**DISTRICT I**

July 14, 2015

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

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2015AP792-CRNM      State of Wisconsin v. Shawn D. Jones (L.C. #2013CF1847)

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

Shawn D. Jones appeals a judgment convicting him of one count of armed robbery with threat of force, as a party to a crime. Attorney Jeffrey W. Jensen filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Jones was informed of his right to file a response, but he

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

has not responded. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Jones could raise on appeal. 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 a claim that Jones should be allowed to withdraw his guilty plea. In order to ensure that a defendant is knowingly, intelligently and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with the defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although “not intended to eliminate the need for the court to make a record demonstrating the defendant’s understanding of the particular information contained therein,” the circuit court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing, as part of its inquiry, reducing “the extent and degree of the colloquy otherwise required between the trial court and the defendant.” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

During the plea hearing, the prosecutor explained the plea agreement on the record and both Jones and his attorney informed the circuit court that the agreement as stated was in accord with their understanding. The circuit court explained to Jones that the sentencing court was not required to follow the recommendation of either the prosecutor or Jones’s lawyer, and could sentence him up to the maximum amount allowed by law. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Jones said he understood.

The circuit court reviewed the maximum potential penalties Jones faced and the elements of the crime with Jones. Jones informed the court that he understood. The circuit court informed Jones that if he was not a citizen of the United States of America, he could be deported if he pled guilty to the crime. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. The circuit court ascertained that Jones had read and signed the plea questionnaire and waiver-of-rights form, and that he had reviewed the form with his attorney and understood all of the information on the form. The circuit court also reviewed the constitutional rights Jones was waiving by entering the plea with Jones in person during the hearing. The circuit court asked Jones whether he had reviewed the criminal complaint and whether the facts alleged in the complaint were true. Jones responded affirmatively.

The circuit court questioned Jones about his relationship with his lawyer, asking whether Jones was satisfied with his lawyer's representation and whether Jones had enough time to speak with his lawyer about the case. Jones indicated that he was satisfied with the representation and had enough time to speak to his lawyer. Based on the circuit court's thorough plea colloquy with Jones, and Jones's review of the plea questionnaire and waiver-of-rights form, we conclude that there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be any arguable basis for filing a motion for resentencing. The circuit court sentenced Jones to thirteen years of imprisonment, with seven years of initial confinement and six years of extended supervision. In deciding the sentence, the court explained that it considered letters from Jones's family, which mentioned positive aspects of his character, and listened carefully to the arguments and recommendations of

the attorneys. The circuit court explained that the gravity of the offense was a primary concern, noting that armed robbery is a serious crime, and this particular armed robbery involved a home invasion where children were present. The circuit court also considered as aggravating the fact that Jones was a member of a juvenile criminal gang called CDS. *See* WIS. STAT. § 973.017(3)(c). The circuit court said that Jones was young—he was only seventeen when he committed this crime—and that while it understood the defense’s argument about juvenile brain development, it had to sentence Jones based on what he did, not based on what he was thinking. The circuit court also expressed concern that Jones was the one in the group who pointed the gun, which was loaded, at the woman and children who lived in the home they robbed.

Turning to Jones’s character, the circuit court said that Jones had not adequately shown remorse and did not seem to realize the seriousness of what he had done. The circuit court explained that this was of particular concern because Jones was less likely to change for the better if he did not understand how his actions impacted others. The circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines 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 an appellate challenge to the sentence.

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 Attorney Jeffrey W. Jensen of further representation of Jones.

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

IT IS FURTHER ORDERED that Attorney Jeffrey W. Jensen is relieved of any further representation of Jones. *See* WIS. STAT. RULE 809.32(3).

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