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**DISTRICT I**

January 7, 2016

To:

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

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2015AP2136-CRNM      State of Wisconsin v. Vaughn A. Mikulance Roeschen  
(L.C. #2014CF1661)

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

Vaughn A. Mikulance Roeschen appeals a judgment convicting him of one count of operating while intoxicated, as a fifth offense. Attorney Russell J.A. Jones 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). Roeschen was informed of his right to file a response, but he has not done so. After considering the no-merit report and conducting an

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

independent review of the record, we conclude that there are no issues of arguable merit that Roeschen 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 Roeschen's guilty plea was knowingly, intelligently, and voluntarily entered. 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 court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, 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).

The prosecutor explained the plea agreement on the record and Roeschen's trial lawyer told the circuit court that the agreement as stated was in accord with Roeschen's understanding. The court explained to Roeschen that it was not required to follow the recommendation of either the prosecutor or Roeschen'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. Roeschen said he understood.

The circuit court first reviewed the elements of the crime with Roeschen, who said that he understood. The court then reviewed the maximum potential penalties with Roeschen, who again told the court that he understood. The court also reviewed the constitutional rights Roeschen was waiving with him on the record. The court informed Roeschen 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 court ascertained that Roeschen had read the plea questionnaire and waiver-of-rights form and had reviewed it with his lawyer. Roeschen told the court that he understood the information on the form and that he had signed it.

The circuit court asked Roeschen whether he had enough time to talk to his lawyer before pleading guilty. Roeschen told the court that he had enough time and that his lawyer had answered any questions he had. The court asked Roeschen whether he reviewed the criminal complaint and whether the court could use the facts alleged in the complaint as the basis for the plea. Roeschen acknowledged reading the complaint and stipulated to the facts alleged in the complaint as a basis for the plea. Based on the court's thorough plea colloquy with Roeschen, and Roeschen's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The court sentenced Roeschen to eighteen months of initial confinement and eighteen months of extended supervision, consecutive to the prison time Roeschen will serve because his supervised release was revoked. In deciding the sentence, the court considered the protection of the community, the need to punish Roeschen for his actions, the need to rehabilitate Roeschen, and the goal of deterring others from engaging in

the same type of criminal behavior. The court noted that Roeschen had a lengthy list of prior criminal offenses and stated its concern that Roeschen had committed so many offenses involving driving under the influence of alcohol in such a short time span. The court also considered the positive aspects of Roeschen's character, including his educational and work history, and his active participation in his daughter's life. Because the 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, 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 and relieve Attorney Russell J.A. Jones of further representation of Roeschen.

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 Russell J.A. Jones is relieved of any further representation of Roeschen in this matter. *See* WIS. STAT. RULE 809.32(3).

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