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January 19, 2016

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

2015AP1237-CRNM State of Wisconsin v. David D. Thompson (L.C. #2013CF3260)

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

David D. Thompson appeals a judgment convicting him of one count of burglary. Attorney Sara Heinemann Roemaat filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Thompson was informed of his right to file a response, but he has not done so. After considering the no-merit report and conducting an independent review of the record, we

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

conclude that there are no issues of arguable merit that Thompson 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 Thompson’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).

During the plea hearing, the prosecutor explained the plea agreement on the record and Thompson’s lawyer told the circuit court that the agreement as stated was in accord with his understanding. The court explained to Thompson that it was not required to follow the recommendation of either the prosecutor or Thompson’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.

The circuit court asked Thompson whether he was communicating with his lawyer and asked whether he understood what his lawyer was telling him. Thompson said he understood. The circuit court asked Thompson about his age, the amount of schooling he had, and asked whether he had taken any drugs that might interfere with his ability to understand the proceedings. Thompson answered the circuit court's questions and said that he understood the proceedings.

The circuit court reviewed the elements of the crime with Thompson and the maximum potential penalties he faced. Thompson informed the court that he understood. The court informed Thompson 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 Thompson had signed the plea questionnaire and waiver-of-rights form and had reviewed it with his lawyer. Thompson told the court that the information on the form about him was correct and informed the court that he had reviewed the information on the form with his lawyer.

The court reviewed with Thompson on the record the constitutional rights he was waiving and informed Thompson that by entering a plea, he was waiving the right to raise defenses to the charges. The circuit court asked Thompson whether he understood what the criminal complaint said he did and asked whether it could use the facts alleged in the complaint as the basis for the plea. Thompson said he reviewed the complaint and the facts alleged in the complaint were true. Based on the court's thorough plea colloquy with Thompson, and Thompson'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 Thompson to four years of imprisonment, with two years of initial confinement and two years of extended supervision. In deciding the sentence, the court explained that it considered the general objectives of sentencing: the protection of the community, punishment of the defendant, the defendant's rehabilitation needs, and the desire to deter others from criminal activity and restitution to the victim. The court noted that Thompson had an extensive history of criminal offenses spanning fifteen years and was on extended supervision at the time of this offense. The court also noted that Thompson had been placed on probation several times in the past and said that placing him on probation again would unduly depreciate the seriousness of the offense. 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. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report next addresses whether there would be arguable merit to a claim that Thompson was improperly denied a probable cause hearing within forty eight hours of his detention. See *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). *Riverside* does not apply where, as here, a person who is arrested is placed on a hold by the Department of Corrections for a potential violation of the rules of supervision. See *State v. Martinez*, 198 Wis. 2d 222, 223, 542 N.W.2d 215 (Ct. App. 1995). There would be no arguable merit to an appellate challenge based on *Riverside*.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Sarah Heinemann Roemaat of further representation of Thompson.

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 Sara Heinemann Roemaat is relieved of any further representation of Thompson in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*