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**DISTRICT I/III**

January 18, 2017

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

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2016AP50-CRNM

State of Wisconsin v. Shawn A. Boyd (L. C. No. 2012CF3561)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Shawn Boyd has filed a no-merit report concluding no grounds exist to challenge Boyd's convictions for armed robbery with use of force as party to a crime, and for first-degree reckless injury. Boyd has filed a response and counsel filed a supplemental no-merit report. Upon our independent review of the record as mandated by *Anders v. California*, 386

U.S. 738 (1967), we conclude there is no arguable merit to any issues that could be raised on appeal and summarily affirm. WIS. STAT. RULE 809.21.<sup>1</sup>

According to the criminal complaint, Boyd and four juveniles as young as fourteen years of age planned to rob a convenience store gas station in Milwaukee. Boyd was supposed to “beat the attendant up” if he came out of the locked register area. The four juveniles entered the convenience store at approximately 4 a.m. and conducted a “snatch and grab.” Video surveillance cameras showed one of the juveniles pointing a weapon at the sixty-year-old attendant while they filled backpacks and bags with candy and food. The attendant left the locked register area and began to chase the juveniles with a baseball bat. Boyd then began “pistol whipping” the attendant in the head with a handgun multiple times. Boyd continued to beat the attendant with his fists and the handgun while the attendant was on the ground. Boyd then dragged the attendant back toward the locked register area and ordered the attendant to open the locked door. Boyd began to count to five, and when the attendant did not comply, Boyd shot the attendant, causing serious injury. All the participants then walked calmly out of the station and went to Boyd’s girlfriend’s mother’s residence.

Police subsequently arrested two juveniles recognized in the surveillance video, who identified Boyd as a perpetrator. Another juvenile was arrested while wearing the same clothing he was wearing in the surveillance video. This juvenile admitted participation in the crimes and identified the participants. This juvenile was arrested at the residence of Boyd’s girlfriend’s mother; the mother was present and consented to a search of the premises. Police discovered a

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<sup>1</sup> References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

weapon in the juvenile's bedroom, a large bag of candy in the freezer, several backpacks and bags full of candy and food items, and empty candy and food wrappers strewn about the floor of the residence. The girlfriend's mother told police that when she arrived home at 5:30 p.m. the evening before the robbery, the four juveniles were all at the residence. She stated Boyd arrived at the residence at approximately 10 p.m. She went to sleep at midnight and woke at 5 a.m. to go to work, at which time she observed that "everyone was at the residence" and a trail of candy wrappers stretched from the kitchen to the living room. The juveniles told her Boyd had "bought it" for them. She found this explanation suspicious and asked more questions, but was told Boyd had been "letting his food stamps build up."

A ten-year-old juvenile at the residence stated he was woken at approximately 3 a.m. on the date of the robbery and observed the juvenile participants and Boyd walk into the residence and begin to play cards and eat candy. He was told Boyd bought all the candy. He overheard one of the juvenile participants say, "[W]e will probably be on the news."

Boyd was charged with armed robbery by use of force, as a party to a crime; first-degree reckless injury; and bail jumping. A subsequent Information added a charge of felon in possession of a firearm by someone who had previously been adjudicated delinquent of a felony. An amended Information incorporated additional charges of possession of a firearm by an individual who had been adjudicated delinquent; substantial battery (substantial bodily harm with intent to cause bodily harm) by use of a dangerous weapon; and bail jumping.

On the day scheduled for trial, Boyd pled no contest to armed robbery by use of force, as party to a crime, and to first-degree recklessly endangering safety. The substantial battery count was dismissed outright, and the remaining counts were dismissed and read in. The circuit court

imposed a sentence consisting of fifteen years' initial confinement and seven years' extended supervision on the armed robbery charge, and five years' initial confinement and three years' extended supervision on the reckless injury charge, consecutively.

There is no manifest injustice upon which Boyd could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, buttressed by the plea questionnaire and waiver of rights form, with attached jury instructions and addendum signed by Boyd, informed Boyd of the constitutional rights he waived by pleading, the elements of the offenses, and the potential punishment. The court specifically advised Boyd of the potential deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). The court also advised Boyd it could impose the maximum penalty, notwithstanding the parties' agreement. The court reviewed Boyd's level of education, and Boyd represented to the court that the medications he was taking did not affect his ability to understand the proceedings. The criminal complaint provided a sufficient factual basis supporting the conviction. There is no arguable merit to any argument that Boyd was coerced into accepting the pleas. The record shows the pleas were knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no-contest or guilty plea constitutes a waiver of nonjurisdictional defenses and defects. *Id.* at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. At the sentencing hearing, the court made necessary changes to the presentence investigation report as suggested by the State, and Boyd stated the court could rely on the PSI

with the corrections made.<sup>2</sup> The court considered the proper factors, including Boyd’s character, the seriousness of the offenses, and the need to protect the public. The court emphasized Boyd’s criminal history, including his serious juvenile offender status and five-year placement at Ethan Allen School. The court appropriately characterized Boyd as a “very dangerous individual” who was unable to rehabilitate his conduct. The court also properly found protection of the public required a significant period of incarceration. The sentence imposed was authorized by law and not overly harsh or excessive. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Boyd’s response to the no-merit report argues the circuit court erroneously exercised its discretion by ordering restitution for medical expenses paid by Society Insurance and insists the record does not provide specific information concerning how Society Insurance made payments for disability expenses totaling \$10,575.55. However, the court specifically stated at the sentencing hearing that the victim had substantial medical expenses. Society Insurance paid for them and documented those expenses to the extent of \$10,575.55. The court clearly inferred justice required that Boyd reimburse Society Insurance in order to make it whole for the compensation paid because of Boyd’s shooting the victim. The proof of payment included amounts Society Insurance compensated the victim for ambulance and fire department services, Froedtert Hospital, Medical College of Wisconsin, Home Care Medical, and paid in temporary

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<sup>2</sup> The final pretrial was held before the Honorable J.D. Watts. The Honorable Jeffrey Wagner presided over the plea hearing. The Honorable Daniel Konkol presided over the sentencing hearing. At the sentencing hearing, Boyd complained to the circuit court that he “started” the matter with one judge, “I went to trial in [another judge’s] court,” and “[n]ow I’m getting sentenced by someone that isn’t my judge.” The court informed Boyd “you have no right to be sentenced by any judge. ... [Y]ou don’t get to pick and choose the judge.” After complaints about his attorney, the court then inquired whether Boyd wished to proceed to sentencing with his attorney, and Boyd stated he wished to proceed with sentencing.

total disability payments. Moreover, Boyd posted a significant \$38,500 cash bail, demonstrating an ability to pay \$10,575.55 in restitution and other items of costs. There is no arguable issue concerning the court's discretion to order restitution for medical and disability payments.

Boyd also argues the circuit court erred by ordering him to pay \$1,702.98 in restitution for money the State expended to have an out-of-state witness appear for trial. The court noted the State incurred tremendous expense in having the witness come for trial, and Boyd's eleventh-hour plea on the day scheduled for trial required those expenses should be borne by Boyd rather than the taxpayers. Furthermore, the court denominated the amount ordered to be reimbursed to the State as "costs" rather than restitution, and the judgment of conviction properly reflects the amount as costs. There is no arguable issue on appeal regarding reimbursement for the State's witness.

Boyd's response to the no-merit report also alleges his trial counsel was ineffective for failing to "investigate or advocate effectively." Our independent review of the record discloses no deficient performance regarding counsel's investigation or advocacy, or any other issues concerning ineffective assistance of counsel.

Finally, we note the circuit court referenced the COMPAS risk assessment at sentencing. However, the record discloses it was not "determinative" of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Accordingly, any challenge to the sentence based on the court's COMPAS reference would lack arguable merit.

An independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Russell Bohach is relieved of further representing Boyd in this matter. *See* WIS. STAT. RULE 809.32(3).

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