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**DISTRICT I**

September 18, 2014

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

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2014AP180-CRNM      State of Wisconsin v. Scott R. Long  
(L.C. #2013CF796)

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

Scott R. Long appeals from a judgment of conviction for operating a motor vehicle while intoxicated as a fifth offense, contrary to WIS. STAT. § 346.63(1)(a) (2011-12).<sup>1</sup> Appellate counsel, Assistant State Public Defender Colleen Marion, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Long has not responded. After independently reviewing the record and the no-merit report, we conclude there

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

are no issues of arguable merit that could be raised on appeal and summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

Long was charged with operating a motor vehicle while intoxicated and with operating a motor vehicle with a prohibited alcohol concentration, both as fifth or sixth offenses. Pursuant to plea negotiations, Long agreed to plead guilty to operating a motor vehicle while intoxicated as a fifth offense and the State agreed to recommend prison, leaving the specifics up to the circuit court. Additionally, the State would recommend the minimum fine and the minimum license suspension.

The circuit court accepted Long's plea and sentenced him to three years of initial confinement and three years of extended supervision, the maximum time available. The circuit court also imposed a two-year license revocation, a three-year ignition interlock, and an \$1800 fine.

Attorney Marion was appointed as Long's postconviction counsel. Long, however, subsequently informed her that he wished to proceed *pro se*. Consequently, counsel moved to withdraw. The circuit court issued an order informing Long of the ramifications of proceeding *pro se* and asking him to respond with a letter demonstrating his understanding of the ramifications and affirmatively advising the court that it was his wish to discharge his current counsel and that he was competent to represent himself. When Long failed to submit a letter to this effect, the circuit court denied counsel's motion.

In her no-merit report, counsel identifies two potential issues for appeal: whether the circuit court properly accepted Long's guilty plea and whether it appropriately exercised its sentencing discretion. We will address each issue in turn.

There is no arguable basis for challenging Long’s guilty plea. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Long completed a plea questionnaire and waiver of rights form and an addendum, *see State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), and the circuit court conducted a plea colloquy addressing Long’s understanding of the charge against him, the penalties he faced, and the constitutional rights he was waiving by entering a plea, *see* WIS. STAT. § 971.08; *Bangert*, 131 Wis. 2d at 266-72. The circuit court also explicitly told Long that at the time of sentencing, it did not have to follow the recommendation of the State or anyone else and that it could sentence him to the maximum amount of prison time and the maximum fine. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14.

We note that the circuit court did not recite the text of WIS. STAT. § 971.08(1)(c) verbatim. Instead, it stated during the colloquy: “And if you’re not a citizen, you can be deported. Do you understand that?” We recently held that, although the statutory language is “strongly preferred,” a court’s failure to use the exact language set forth in § 971.08(1)(c) does not entitle a defendant to plea withdrawal, as long as the court “substantially complied” with the statutory mandate. *See State v. Mursal*, 2013 WI App 125, ¶¶15-17, 20, 351 Wis. 2d 180, 839 N.W.2d 173. We conclude that the circuit court substantially complied with the statute.<sup>2</sup>

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<sup>2</sup> WISCONSIN STAT. § 971.08(1)(c) directs courts to do the following, before accepting a plea of guilty or no-contest:

Address the defendant personally and advise the defendant as follows:  
 “If you are not a citizen of the United States of America, you are advised that a plea of guilty or no contest for the offense with which you are charged may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law.”

In addition, the circuit court did not expressly ascertain during the plea colloquy whether any promises, agreements, or threats were made in connection with Long's plea. However, Long signed the plea questionnaire, which stated: "I have decided to enter this plea of my own free will. I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement." Additionally, Long's counsel confirmed for the court that he was satisfied Long was freely, voluntarily, and intelligently entering his plea. There would be no arguable merit to a challenge to the plea's validity on this or any other basis. See *Moederndorfer*, 141 Wis. 2d at 827-28; see also *State v. Hoppe*, 2009 WI 41, ¶30, 317 Wis. 2d 161, 765 N.W.2d 794 ("A circuit court may use the completed Plea Questionnaire/Waiver of Rights Form when discharging its plea colloquy duties.").

The second issue counsel raises is whether the circuit court erroneously exercised its sentencing discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The primary objectives of a sentence include protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. A sentencing court should identify the objectives of greatest importance and explain how a particular sentence advances those objectives. *Id.* The necessary amount of explanation "will vary from case to case." *State v. Brown*, 2006 WI 131, ¶39, 298 Wis. 2d 37, 725 N.W.2d 262 (citation omitted).

In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the court's discretion. See *Gallion*, 270 Wis. 2d 535, ¶41.

In the statement he made at sentencing, Long told the court that on the night of his arrest, he had gone to a gas station a few blocks away from where he was staying. He said two individuals approached him and there was an altercation. Long then tried to chase them down in his vehicle.

The circuit court responded to Long's account of the events:

It's sort of hard to believe. You're driving 60 miles an hour in a 30-something-mile-an-hour zone. You're speeding. You went through a solid red light, and your story is you're chasing someone who attempted to strong-arm rob you. It's a little hard to believe. It looks like a poor excuse [for] why you were driving so fast and blowing red lights. And you could have called 911, but maybe you were too intoxicated to think of that.

The circuit court continued by commenting on the dangers of drinking and driving and noted that Long, who was twenty-eight years old, had serious rehabilitative needs. Prior sentences, the court concluded, had "obviously" failed to deter Long from operating while intoxicated.

The circuit court sentenced Long to the maximum time available (three years of initial confinement and three years of extended supervision), finding that anything less would unduly diminish the serious nature of the offense. *See* WIS. STAT. §§ 346.63(1)(a), 343.307(1), 346.65(2)(am)5., 939.50(3)(h), 973.01(2)(b)8. & (2)(d)5. However, the circuit court made Long eligible for the Wisconsin Substance Abuse Program after serving one year and six months. The circuit court also imposed a two-year license revocation, a three-year ignition interlock, and an \$1800 fine.

The record demonstrates that the circuit court followed the dictates of *Gallion* at the sentencing hearing. Further, the circuit court's sentence was not so excessive that it shocks the public's sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Colleen Marion is relieved of further representation of Scott R. Long in this matter. *See* WIS. STAT. RULE 809.32(3).

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