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**DISTRICT I/IV**

August 31, 2016

To:

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

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2013AP2189-CRNM      State of Wisconsin v. Otha L. Smith, Jr. (L.C. # 2012CF1924)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Attorney Patrick Flanagan, appointed counsel for Otha Smith, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

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

In response to our order of October 12, 2015, directing Smith's attorney to review additional issues, counsel informed us that Smith does not want to raise any issue that might result in reversal of the conviction, but wants only review of the sentencing decision. Smith then responded personally with a letter dated February 27, 2016, that was not entirely clear, but could be read as saying that Smith *does* want to seek reversal of the conviction. However, because the letter was not fully clear, in our order of March 14, 2016, we directed Smith to clarify his position. We stated that if he did not respond within twenty-one days, we would accept counsel's description of Smith's position. Smith has not responded. Therefore, we discuss only sentencing in this order.

Smith was convicted of one count of burglary and one count of possession of burglarious tools. On the burglary count, the circuit court imposed a sentence of three years of initial confinement and three years of extended supervision, consecutive to any other sentence. On the second count, the court imposed a concurrent and lesser sentence. According to the recent letter from counsel, Smith wants the controlling sentence in this case to be made concurrent with an earlier sentence, and for both sentences to be reduced to eighteen months of incarceration.

The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the sentences are within the proper ranges for their felony classes. In addition, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to a motion to amend the sentence to be concurrent or reduced.

Smith also raised an issue about whether he is entitled to additional sentence credit. In our order of April 27, 2016, we explained what additional information was necessary for counsel to establish that there is no arguable merit on this issue. Counsel has filed a second supplemental no-merit report that provides that information. There is no arguable merit to this issue.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Flanagan is relieved of further representation of Smith in this matter. *See* WIS. STAT. RULE 809.32(3).

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