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**DISTRICT III/IV**

January 3, 2017

To:

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Marinette County Courthouse  
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Ryan J. Brunette  
W5540 Cty K  
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You are hereby notified that the Court has entered the following opinion and order:

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2015AP1296-CRNM      State of Wisconsin v. Ryan J. Brunette (L.C. # 2014CF96)

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

Attorney Eric Pangburn, appointed counsel for Ryan Brunette, has 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). Counsel provided Brunette with a copy of the report, and both counsel and this court advised him of his right to file a response. Brunette has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent

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

review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Brunette pled no contest to one count of operating a motor vehicle without the owner's consent. The court imposed and stayed a sentence of eighteen months of initial confinement and two years of extended supervision. The court placed Brunette on probation for three years, with one year of jail time as a condition of probation.

The no-merit report addresses whether Brunette's plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Brunette was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The court generally imposed the parties' joint sentence recommendation, with the exception that the court imposed one year of conditional jail time, instead of the agreed-to six months. Because the court largely imposed the jointly recommended sentence, we conclude there is no merit to contesting those portions of the sentence on appeal. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

As to those additional six months of jail time, it appears that this may have been imposed because the court believed that the 197 days of sentence credit that Brunette was due would be applied against, and exceed, the agreed-to six months of jail time. That potentially raises an arguable issue about whether Brunette was sentenced on accurate information, as normally,

sentence credit is not applied to conditional jail time, because probation is not a “sentence.” *See State v. Fearing*, 2000 WI 229, ¶¶8-13, 239 Wis. 2d 105, 619 N.W.2d 115.

However, any potential issue appears to be moot because: (1) the record contains an amended judgment in which the court eliminated the balance of the jail time after approximately two months because Brunette obtained his GED, and (2) even if there is an arguable legal issue, it appears that Brunette’s year in jail would have been fully served as of February 2016. Accordingly, there is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

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

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