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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

April 10, 2019

To:

Hon. Ralph M. Ramirez  
Circuit Court Judge  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Vicki Zick  
Zick Legal LLC  
P.O. Box 325  
Johnson Creek, WI 53038

Gina Colletti  
Clerk of Circuit Court  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Criminal Appeals Unit  
Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Susan Lee Opper  
District Attorney  
515 W. Moreland Blvd., Rm. G-72  
Waukesha, WI 53188-2486

Colton Kenneth Newman  
2550 Honey Creek Circle, #817  
East Troy, WI 53120

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

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2018AP1994-CRNM      State of Wisconsin v. Colton Kenneth Newman (L.C. #2017CF132)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Colton Kenneth Newman appeals from a judgment convicting him of attempting to elude a traffic officer. Newman's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Newman

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

was advised of his right to file a response but has elected not to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

A police officer detected by radar a vehicle traveling 102 mph in a 70-mph zone and gave pursuit at speeds up to 125 mph. The speeding vehicle cut off a semi-truck, then ran an exit ramp stop sign, causing another vehicle to move evasively. The officer activated his emergency lights and siren and attempted to pull over the vehicle as it sped at 70-75 mph in a 25-mph zone. Still ignoring the officer's visual and audible signals, the driver ran another stop sign, stopping only when he found himself on a dead-end street.

Seventeen-year-old Newman was arrested. He explained that he fled because he was afraid he would lose his driver's license and his job due to his "bad driving record" and that he was running late for his first day of new employment. Newman pled no contest to attempting to elude a traffic officer. The court imposed an eight-month jail sentence with Huber privileges and electronic monitoring after five months. This no-merit appeal followed.

The no-merit report considers whether Newman's no-contest plea was knowing, voluntary, and intelligent. Incorporating Newman's signed plea questionnaire, the circuit court engaged Newman in a meaningful colloquy that fulfilled the duties set forth in WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶¶34-36, 293 Wis. 2d 594, 716 N.W.2d 906. The court confirmed that Newman understood the offense's elements and that he understood it was not bound by either party's sentencing recommendation and could impose the maximum penalty. *See State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. The court recited

the constitutional rights Newman was waiving, verified that he had no further questions, and found a factual basis from the criminal complaint. Our review of the record satisfies us that Newman's no-contest plea was knowing, voluntary, and intelligent.

The no merit report also addresses whether Newman knowingly, intelligently, and voluntarily waived his right to a preliminary hearing. On the date set for the hearing, Newman filed a preliminary hearing questionnaire and waiver form. After conducting a thorough colloquy with Newman on the record, the court accepted Newman's waiver, finding it to be knowing, intelligent, and voluntary.

A knowing, intelligent, and voluntary plea, entered with benefit of counsel, waives the right to claim error at the preliminary hearing stage. *See State v. Strickland*, 27 Wis. 2d 623, 633, 135 N.W.2d 295 (1965), *overruled in part on other grounds as stated in State v. Jenkins*, 2007 WI 96, ¶¶53-55, 303 Wis. 2d 157, 736 N.W.2d 24. Newman's valid no-contest plea thus waived all nonjurisdictional defects and defenses, even claims of violation of constitutional rights prior to the entry of the plea. *See State v. Bangert*, 131 Wis. 2d 246, 293, 389 N.W.2d 12 (1986). The right to a preliminary hearing rests upon statute, however, and is not a constitutional requirement. *Strickland*, 27 Wis. 2d at 633. While WIS. STAT. § 971.31(10) allows exceptions for a review of certain errors, it provides no exception for errors occurring at the preliminary hearing. Absent some showing of prejudice, we will not set aside a judgment of conviction and permit a withdrawal of a guilty or no-contest plea because of a claimed denial of a preliminary hearing, and this is not the type of error that gives rise to a presumption of prejudice. *Strickland*, 27 Wis. 2d at 633.

The no-merit report also considers whether any errors occurred in sentencing. Our independent record review satisfies us that appellate counsel has thoroughly analyzed the sentencing issue and properly concluded that no non-frivolous challenge could be made to the court's exercise of discretion. We need discuss it no further.

The final potential issue the report raises is whether Newman's request at sentencing for expunction could be reviewed postprobation. If a person is under the age of twenty-five when he or she commits an offense for which the maximum period of imprisonment is six years or less, "the court *may* order *at the time of sentencing* that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition." WIS. STAT. § 973.015 (emphasis added). The statutory language indicates that the court's determination is discretionary but plainly restricts the court to exercising its discretion at the sentencing proceeding. *State v. Matasek*, 2014 WI 27, ¶45, 353 Wis. 2d 601, 846 N.W.2d 811. The denial of Newman's request on the grounds that granting expunction would depreciate the serious danger he posed to the public and thus would not be in the community's best interests reflects a proper exercise of discretion.

Our independent review of the record discloses no other potentially meritorious issue 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 Vicki Zick is relieved from further representing Newman in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*