OFFICE OF THE CLERK

WISCONSIN COURT OF APPEALS

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

DISTRICT I

May 22, 2019

To:

Hon. Clare L. Fiorenza
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
821 W. State Street, Room G-8
Milwaukee, WI 53233

Charlotte Gibson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Angela Conrad Kachelski
Kachelski Law Office
7101 N. Green Bay Ave., Suite 6A
Milwaukee, WI 53209

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

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

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

2016AP1859-CRNM	State of Wisconsin v. Demarcus Lizel Johnson (L.C. # 2014CF3270)
2016AP1860-CRNM	State of Wisconsin v. Demarcus Lizel Johnson (L.C. # 2014CF3660)
2016AP1861-CRNM	State of Wisconsin v. Demarcus Lizel Johnson (L.C. # 2014CF4297)

Before Kessler, P.J., Brennan and Dugan, 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).

Demarcus L. Johnson appeals from judgments of conviction for fleeing an officer, two counts of delivery of heroin, and being a party to the crime of delivery of cocaine. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Johnson received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, the judgments are summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Two bicycle patrol officers made contact with the vehicle Johnson was driving and asked Johnson to pull off to the side of the road. Johnson started to pull over to the side of the road but sped away. The vehicle was located and stopped by an officer in a marked squad car. Johnson sped away as the officer opened the driver's door and ordered Johnson to exit the vehicle. The drug charges result from controlled drug buys made by confidential informants on separate occasions and as part of two separate drug investigations. The heroin delivery charges were charged with penalty enhancers for being second or subsequent offenses.

Johnson entered guilty pleas. The second or subsequent offense enhancers on the heroin charges were dismissed by the prosecutor. The prosecution agreed to limit its sentence recommendation to seven years combined on the two heroin convictions, seven years consecutive on the cocaine conviction, and concurrent time on the fleeing an officer conviction. At sentencing, the prosecutor made the agreed upon recommendation. On the fleeing an officer conviction, Johnson was sentenced to eighteen months of initial confinement and two years of

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[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

extended supervision to be served concurrently with the other sentences. A term of three years of initial confinement and four years of extended supervision was imposed on each of the three other convictions. The sentences on the heroin convictions were made concurrent to each other but consecutive to the cocaine conviction sentence. The court indicated that Johnson was not eligible for the Substance Abuse Program and he was allowed to be eligible for the Challenge Incarceration Program on the heroin convictions after serving one year of initial confinement. Johnson was given appropriate sentence credit of eight days.

The no-merit report addresses the potential issues of whether Johnson's plea was knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. Further, we cannot conclude that the sentences when measured against the potential maximum sentences were so excessive or unusual as to shock public sentiment.[2] *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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[2] Although the maximum sentence was imposed on the fleeing an officer charge, imposition of the maximum does not alone render the sentence unduly harsh. The maximum is justified for more aggravated violations. *See* ***State v. McCleary***, 49 Wis. 2d 263, 275, 182 N.W.2d 512 (1971). Here the sentencing court observed that the offense was serious because Johnson fled not one but two officers' directives to stop. Further, the sentence was made concurrent to the other longer sentences and does not result in the service of any additional time.

Our review of the record discloses no other potential issues for appeal.[3] Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Johnson further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Angela C. Kachelski is relieved from further representing Demarcus L. Johnson in these appeals. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals

[3] On April 27, 2017, these appeals were placed on hold awaiting the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, unpublished certification (WI App Nov. 9, 2016), which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument in the supreme court. These appeals were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643, which raised the same issue. ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Based on ***Freiboth***, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.