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DISTRICT II

April 29, 2026

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Circuit Court Judge
Electronic Notice

John Blimling
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Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
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David Malkus
Electronic Notice

Russell David Warchol #223296
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1388-CRNM State of Wisconsin v. Russell David Warchol (L.C. #2022CF154)

Before Gundrum, Grogan, and Lazar, 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).

Russell David Warchol appeals from a judgment of conviction entered upon his plea of no contest. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Warchol received a copy of the report and was advised of his right to file a response, which he has done. Upon consideration of the no-merit report and Warchol's response, and an independent review of the Record, we

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Warchol with one count of armed robbery by use or threatening use of a dangerous weapon, contrary to WIS. STAT. § 943.32(2). The criminal complaint described an incident in which Warchol approached a cashier at a Kwik Trip, placed a gun on the counter, and told the cashier to open the cash register. When the cashier refused to do so, Warchol told him to back away. Warchol then grabbed two bottles of alcohol and fled the scene. Police located Warchol at a local hospital following an investigation that included reviewing the Kwik Trip's surveillance video. When he was found at the hospital, Warchol had several of the same items of clothing with him that were worn during the robbery as depicted in the surveillance video.

Pursuant to an agreement with the State, Warchol entered a plea of no contest to the sole count of armed robbery. At sentencing, consistent with the terms of the plea agreement, the State requested 15 years of initial confinement and 15 years of extended supervision, consecutive to the revocation sentence Warchol was already serving. The defense, which was free to argue at sentencing, requested 5 years of initial confinement and 5 years of extended supervision. The circuit court sentenced Warchol to 15 years of initial confinement and 12 years of extended supervision, consecutive to the sentence he was serving. This no-merit appeal follows.

First, we agree with the report that there is no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant either must show that the plea colloquy was defective in a manner that resulted in him or her actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea

agreement. *State v. Bangert*, 131 Wis. 2d 246, 272-76, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

As stated above, Warchol entered a no-contest plea to the charged offense. The circuit court conducted a standard plea colloquy, inquiring into Warchol's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Warchol understood that it would not be bound by any sentencing recommendations. In addition, Warchol provided the court with a signed plea questionnaire. Warchol indicated to the court that he had indeed signed the form and understood the information it provided, and he is not now claiming otherwise. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

In his response to the no-merit report, Warchol claims there were items he thought “should not be allowed into evidence,” and he “thought that [he] would be able to ... go to trial.” However, both the circuit court, during the plea colloquy, and the plea questionnaire, which Warchol affirmed that he read and understood, clearly informed Warchol of the rights he was giving up consistent with his favorable agreement with the State. Such rights plainly include “the right to a trial,” the “right to ... present evidence at trial[,]” and the “right to confront in court the people who testify against [him] and cross-examine them” as to any evidence they present. Warchol has not provided any basis on which we could conclude that he did not

knowingly, intelligently, and voluntarily waive these rights when he entered his plea. We conclude there would be no arguable merit to a challenge based on these issues.

The circuit court found that facts in the criminal complaint supplied a factual basis for the plea, and there is nothing in the Record, the no-merit report, or the response that leads us to conclude otherwise. In addition, they provide nothing that would support a claim of ineffective assistance of trial counsel. Warchol has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling.² *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Warchol asserts in his response that he was unable to view certain items from the discovery in his case until after his plea and sentencing hearing. He further asserts that he received a witness list from his appellate counsel that he had not seen before. Though it is unclear whether Warchol intends to argue that he should be allowed to withdraw his plea based on the discovery and witness list being “newly discovered evidence,” he has not even attempted to explain how his earlier access to these documents could have mattered here. *See State v. McCallum*, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997) (in order to establish grounds for plea withdrawal based on newly discovered evidence, a defendant must establish that “a reasonable probability exists that a different result would be reached in a trial” if such evidence were presented to a factfinder). We conclude that there would be no arguable merit to a challenge based on this argument.

² Our review of the Record, the no-merit report, and the response does not indicate that any suppression motions were filed in this case.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offense, Warchol's character, and the need to protect the public. See *State v. Gallion*, 2004 WI 42, ¶¶27, 40-44, 270 Wis. 2d 535, 678 N.W.2d 197. The court also reviewed a private sentencing memorandum Warchol's trial counsel submitted on his behalf. Additionally, Warchol had the opportunity to address the court directly, and did so prior to the court's imposition of sentence.

The circuit court imposed a sentence of 27 years of imprisonment, comprised of 15 years of initial confinement and 12 years of extended supervision. Warchol faced a maximum sentence of 40 years of imprisonment. See WIS. STAT. § 939.50(3)(c). Under the circumstances, it cannot reasonably be argued that Warchol's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the Record, we have found no other arguable basis for reversing the judgment of conviction. See *State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney David Malkus is relieved from further representing Russell David Warchol in this appeal. See WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals