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**DISTRICT I**

April 28, 2026

To:

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Electronic Notice

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Salvatore Jacob D'Acquisto 149155  
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Oshkosh, WI 54903-3310

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

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2024AP736-CRNM      State of Wisconsin v. Salvatore Jacob D'Acquisto  
(L.C. # 2020CF4618)

Before Colón, P.J., Geenen, and Petrashek, 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).**

Salvatore Jacob D'Acquisto appeals a judgment of conviction entered upon his guilty pleas to child enticement and exposing genitals to a child. D'Acquisto's appellate counsel, Attorney Pamela Moorshead, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).<sup>1</sup> D'Acquisto filed a response, and Attorney Moorshead filed a supplemental no-merit report and an amended supplemental no-merit report addressing the issues that he raised. Upon consideration of the no-merit reports and response,

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

and following an independent review of the record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. See WIS. STAT. RULE 809.21.

As alleged in the criminal complaint, G.V.J., then 13 years old, contacted the Oak Creek Police Department on December 27, 2020, and reported that she had been sexually assaulted some months earlier, when she was 12 years old. G.V.J. alleged that “Sal,” who she described as her mother’s “sugar daddy,” brought her to the Target store in Oak Creek in March 2020, and bought approximately \$300 worth of items for her. After shopping, G.V.J. and D’Acquisto returned to D’Acquisto’s vehicle. G.V.J. said that D’Acquisto next displayed his penis, then seized her hand and placed it on his penis while he masturbated. G.V.J.’s mother, Y.K., came to the police station, identified “Sal” as D’Acquisto, and showed police his profile on the sex offender registry. Y.K. also told police that she had telephoned D’Acquisto on her way to the police station and had questioned him about what happened. According to Y.K., he admitted G.V.J.’s allegations.

The complaint further alleged that police located D’Acquisto the next day at a hospital, where he was receiving treatment for low blood sugar. Police arrested him after he was medically cleared for release. At the police station, an officer questioned D’Acquisto after giving him *Miranda* warnings.<sup>2</sup> D’Acquisto gave a statement that included admissions that he had “masturbated in front of [G.V.J.] and grabbed her hand and placed it on his penis.” The

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<sup>2</sup> Before questioning a suspect in custody, officers must inform the person of, *inter alia*, the right to remain silent, the fact that any statements made may be used at trial, the right to have an attorney present during questioning, and the right to have an attorney appointed if the person cannot afford one. *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

State charged D'Acquisto with one count of second-degree sexual assault of a child and one count of exposing genitals to a child.

D'Acquisto requested a jury trial, and the case was scheduled for a final pretrial hearing on May 7, 2021, and a trial on June 7, 2021. The parties filed motions *in limine* shortly before the final pretrial. Among D'Acquisto's motions was his request "for an order prohibiting the introduction or reference to any statements [he] made ... until a hearing on their admissibility is held outside the presence of the jury." During the pretrial hearing, the circuit court expressed annoyance that D'Acquisto had not disputed the admissibility of his statements earlier in the proceedings. However, the circuit court advised that it would hold a hearing on the issue on the day of trial and set a deadline for trial counsel to file a suppression motion. Trial counsel complied with that deadline.<sup>3</sup>

On the day set for trial, D'Acquisto advised the circuit court that he wished to withdraw the suppression motion and instead resolve the case with a plea agreement. Pursuant to its terms, he pled guilty to an amended charge of child enticement and to the original charge of exposing genitals to a child; the State promised to recommend an evenly bifurcated ten-year term of imprisonment. The circuit court accepted D'Acquisto's guilty pleas.

The case proceeded to sentencing. For the offense of child enticement, D'Acquisto faced a maximum penalty of 25 years of imprisonment and a \$100,000 fine. *See* WIS. STAT.

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<sup>3</sup> D'Acquisto's suppression motion sought relief pursuant to both *Miranda* and *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965). At a *Miranda-Goodchild* hearing, the State is required to show by a preponderance of the evidence that the defendant received and understood the warnings required by *Miranda* and that the defendant's custodial admissions were voluntary. *State v. Jiles*, 2003 WI 66, ¶¶25-26, 262 Wis. 2d 457, 663 N.W.2d 798.

§§ 948.07(1), 939.50(3)(d) (2019-20). The circuit court imposed a 15-year term of imprisonment bifurcated as 10 years of initial confinement and 5 years of extended supervision. For exposing genitals to a child, D'Acquisto faced three years and six months of imprisonment and a \$10,000 fine. *See* WIS. STAT. §§ 948.10(1)(a), 939.50(3)(i) (2019-20). The circuit court imposed a concurrent, evenly bifurcated two-year term of imprisonment. In subsequent proceedings, the circuit court set restitution at zero and granted D'Acquisto's motion for a total of 23 days of sentence credit.

We first consider whether D'Acquisto could pursue an arguably meritorious claim for plea withdrawal on the ground that the plea hearing was inadequate to demonstrate that he entered his guilty pleas knowingly, intelligently, and voluntarily. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). We agree with appellate counsel that he could not.

Near the outset of the plea hearing, the circuit court established that D'Acquisto was 62 years old and had completed high school. The court also established that D'Acquisto had signed a plea questionnaire and waiver of rights form after reviewing it with trial counsel and that he understood the form and its attachments. *See State v. Pegeese*, 2019 WI 60, ¶37, 387 Wis. 2d 119, 928 N.W.2d 590. The court then conducted a colloquy with D'Acquisto that complied with the court's obligations when accepting a plea other than not guilty. *See id.*, ¶23; *see also* WIS. STAT. § 971.08. The record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions describing the elements of the crimes to which D'Acquisto pled guilty, and the plea hearing transcript—shows that D'Acquisto entered his guilty pleas knowingly, intelligently, and voluntarily. *See Bangert*, 131 Wis. 2d at 266-72. Pursuit of this issue would lack arguable merit.

We next conclude that D'Acquisto could not mount an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that punishment and protection of the community were the primary sentencing goals, and the circuit court discussed the factors that it viewed as relevant to achieving those goals. *See id.*, ¶¶41-43. The discussion included the mandatory sentencing factors of "the gravity of the offense[s], the character of the defendant, and the need to protect the public." *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court acknowledged the State's recommendation for an evenly bifurcated ten-year sentence, but the circuit court rejected that recommendation after finding that D'Acquisto was dangerous. In this regard, the circuit court emphasized that D'Acquisto had prior convictions for child enticement and for first-degree sexual assault, and in both of those prior cases he had served prison sentences that ultimately proved insufficient to prevent him from victimizing G.V.J. Nonetheless, the court imposed an aggregate sentence that was substantially less than the aggregate 28.5 years of imprisonment and \$110,000 in fines that he faced upon conviction. Accordingly, D'Acquisto cannot mount an arguably meritorious claim that his sentences are excessive or shocking. *See State v. Mursal*, 2013 WI App 125, ¶¶24, 26, 351 Wis. 2d 180, 839 N.W.2d 173. We conclude that a challenge to the circuit court's exercise of sentencing discretion would be frivolous within the meaning of *Anders*.

In response to the no-merit report, D'Acquisto suggested that he was entitled to withdraw his guilty pleas because his trial counsel was ineffective in various ways. Ineffective assistance of counsel can constitute a manifest injustice warranting plea withdrawal. *State v. Dillard*, 2014 WI 123, ¶¶83-84, 358 Wis. 2d 543, 859 N.W.2d 44. We agree with appellate counsel, however, that D'Acquisto's potential claims lack arguable merit.

To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate deficiency, a defendant must show that counsel’s performance “fell below an objective standard of reasonableness,” which requires the defendant to overcome “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance[.]” *Id.* at 688-89. To demonstrate prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. If a defendant does not satisfy one prong of this analysis, a reviewing court need not consider the other. *Id.* at 697.

D’Acquisto first alleged that his trial counsel was ineffective for filing an untimely suppression motion. There is no merit to this allegation.

D’Acquisto raised the suppression issue in the motions *in limine* that his trial counsel filed shortly before the final pretrial hearing. A motion *in limine* is an appropriate mechanism for raising the admissibility of evidence. *State v. Horn*, 139 Wis. 2d 473, 487, 407 N.W.2d 854 (1987). The record does not suggest that D’Acquisto’s motions *in limine* were untimely: the circuit court did not enter a written scheduling order in this case and did not issue an oral ruling establishing a deadline for motions prior to the final pretrial hearing. Further, the State, like D’Acquisto, filed its motions *in limine* shortly before that hearing.

Moreover, while WIS. STAT. § 971.31(4) requires the parties to make certain motions before trial, that statute does not apply to statements of the defendant referenced in § 971.31(3). *Upchurch v. State*, 64 Wis. 2d 553, 557-59, 219 N.W.2d 363 (1974). Thus, a defendant may

make a timely suppression motion even at trial. *Id.* at 558-59; *see also* § 971.31(3). It is true that in this case, the circuit court expressed annoyance about the timing of D’Acquisto’s challenge to the admissibility of his statements, and the court implied that D’Acquisto should have raised the issue earlier in the proceedings. However, the *Upchurch* court observed under similar circumstances: “[t]he [circuit] court was mistaken in its intimation just prior to trial that the request for a hearing then on the admissibility of the statement [that the defendant] allegedly gave police came too late.” *Id.*, 64 Wis. 2d at 559.

In light of *Horn* and *Upchurch*, the timing of trial counsel’s actions in challenging the admissibility of D’Acquisto’s statements fell well within the wide range of professionally reasonable assistance. Counsel’s performance therefore was not deficient. *See State v. Jackson*, 2011 WI App 63, ¶9, 333 Wis. 2d 665, 799 N.W.2d 461 (explaining that “if counsel’s conduct falls within what a reasonably competent defense attorney could have done, then it was not deficient performance”). Further pursuit of this issue would lack arguable merit.

D’Acquisto also suggests that he is entitled to plea withdrawal on the ground that his trial counsel was ineffective for recommending that he accept the State’s plea offer rather than urging him to reject it and instead litigate the suppression motion. The record does not support an arguably meritorious claim that trial counsel was ineffective in this regard.

If convicted as charged of second-degree sexual assault of a child, D’Acquisto faced a maximum penalty of a \$100,000 fine and a 40-year term of imprisonment. *See* WIS. STAT. §§ 948.02(2), 939.50(3)(c) (2019-20). The State’s offer thus significantly reduced D’Acquisto’s exposure upon conviction, and the risk of a conviction after trial was substantial. G.V.J. was 13 years old when she reported being sexually assaulted a few months earlier by a person that she

knew. She was able to give police a detailed account of the occurrence, and she could have provided such an account to a jury. Y.K. was named on the State’s witness list, and the State could have questioned her at trial about the inculpatory statement that D’Acquisto made to her.<sup>4</sup> *See* WIS. STAT. § 908.01(4)(b)1. Moreover, D’Acquisto faced the possibility that the State would be able to introduce evidence of his prior sexual offenses to prove matters such as “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *See* WIS. STAT. § 904.04(2)(a), (b)1. The State thus had a strong case against him, even if the circuit court suppressed his custodial statement. The record therefore does not support an arguably meritorious claim that trial counsel performed deficiently by urging D’Acquisto to accept a plea agreement. “[A] lawyer has the right and duty to recommend a plea bargain if he or she feels it is in the best interests of the accused.” *State v. Provo*, 2004 WI App 97, ¶17, 272 Wis. 2d 837, 681 N.W.2d 272.

Additionally, we have reviewed the videorecording of D’Acquisto’s custodial statement. We agree with appellate counsel’s analysis of that recording and with appellate counsel’s assessment that the recording did not provide support for a potential claim either that police failed to comply with *Miranda* or that D’Acquisto made his custodial statement involuntarily. Accordingly, the record does not support an arguably meritorious claim that D’Acquisto suffered prejudice as a consequence of trial counsel’s recommendation to abandon the suppression motion and resolve the charges with the plea agreement. *See Strickland*, 466 U.S. at 687. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

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<sup>4</sup> As reflected in the complaint, D’Acquisto told police that he and Y.K. were married. Assuming that statement was true, their marital status would not have affected the State’s ability to question Y.K. about D’Acquisto’s admissions. *See* WIS. STAT. § 905.05(3)(b).

D'Acquisto next alleges that his trial counsel was ineffective for “promis[ing D'Acquisto that] if he would plead guilty to the State’s offer, th[en] he would get no more than the 5 years confinement.” We agree with appellate counsel that this claim lacks arguable merit.<sup>5</sup>

Misinformation from counsel about the consequences of conviction may warrant plea withdrawal on the ground that counsel’s misinformation undermines the voluntary nature of the plea and results in a manifest injustice. *Dillard*, 358 Wis. 2d 543, ¶¶37, 39 & n.14. However, notwithstanding an allegation of misinformation, a motion for plea withdrawal may be denied without a hearing if the record conclusively demonstrates that the defendant is not entitled to relief. *See State v. Sull*a, 2016 WI 46, ¶¶30, 40, 369 Wis. 2d 225, 880 N.W.2d 659.

Here, D'Acquisto assured the circuit court during the plea colloquy that no one had promised him anything outside of the plea agreement to induce his guilty pleas. The circuit court also confirmed during the colloquy that D'Acquisto understood what the State had promised to recommend, and the circuit court explained: “I could follow that, I could do something else, I could do what you ask me to do, I’ll do what I think is fair and appropriate but it could be up to th[e] maximums.” The court then asked D'Acquisto: “Do you understand that?” D'Acquisto said that he did. The record thus demonstrates that D'Acquisto is not entitled to plea withdrawal based on trial counsel’s alleged misinformation about the sentences that the circuit court would impose. Even if trial counsel erroneously advised D'Acquisto that he would receive no more than five years of initial confinement, the record conclusively shows that D'Acquisto was not

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<sup>5</sup> Although we agree with appellate counsel that there is no merit to D'Acquisto’s allegation of ineffective assistance during plea negotiations, we note that appellate counsel’s analysis includes both a citation to and a quotation from an unpublished *per curiam* opinion of this court. We caution appellate counsel that such a citation is improper and may lead to sanctions. *See* WIS. STAT. RULES 809.23(3)(a), (b), 809.83(2).

prejudiced because he understood at the time of his guilty plea that the circuit court was free to impose the maximum sentences. The information provided at the time of the plea hearing overrides any contrary assertion that his trial counsel may have made before the hearing began. *See State v. Bentley*, 201 Wis. 2d 303, 319, 548 N.W.2d 50 (1996).

Finally, D'Acquisto asserts that he has an arguably meritorious claim that the circuit court was biased against him. In support, he points to the court's irritation with his trial counsel for not challenging the admissibility of his statements until the final pretrial hearing. A claim of judicial bias on this ground would lack arguable merit. "Not establishing bias or partiality ... are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as ... judges, sometimes display." *Liteky v. United States*, 510 U.S. 540, 555-56 (1994).

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of any further representation of Salvatore Jacob D'Acquisto on 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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*Samuel A. Christensen*  
*Clerk of Court of Appeals*