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DISTRICT III

September 9, 2026

To:

Hon. Steven P. Anderson
Reserve Judge

Michelle M. Erdman
Electronic Notice

Lori Gorsegrner
Clerk of Circuit Court
Rusk County Courthouse
Electronic Notice

Dustin E. Hewitt 628463
Eau Claire County Jail
710 Second Avenue
Eau Claire, WI 54703

John Blimling
Electronic Notice

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

2023AP845-CRNM State of Wisconsin v. Dustin E. Hewitt (L. C. No. 2013CF127)

Before Stark, P.J., Hruz, and Gill, 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).

Dustin Hewitt appeals from a judgment convicting him of making a bomb scare, threatening injury by computer message, and disorderly conduct. Attorney Michelle Erdman has filed a no-merit report seeking to withdraw as appellate counsel. See WIS. STAT. RULE 809.32 (2023-24).¹ The no-merit report sets forth the lengthy procedural history of the case and addresses Hewitt's plea and sentence on the felony bomb scare count. Hewitt has filed a

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

response to the no-merit report alleging: ineffective assistance of his trial, postconviction, and appellate counsel; an unspecified breach of a deferred acceptance of plea agreement (DAP); a defective appellate record; and an improper restriction on his access to computers as a condition of his supervision. Having independently reviewed the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal. Therefore, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. See WIS. STAT. RULE 809.21.

The State charged Hewitt in 2013 with felony counts of making a bomb scare and making a threat to injure to extort money, and misdemeanor counts of threatening injury by computer message and disorderly conduct. The charges arose out of a series of threatening and harassing emails, text messages, letters, and Twitter posts Hewitt made to or directed at GoDaddy.com and its employees because he believed the company should pay him money for referring clients to it.

The circuit court held a competency hearing prior to the preliminary hearing and found Hewitt competent to stand trial based upon the evaluation of a neuropsychologist. The neuropsychologist testified that Hewitt had borderline intellectual function, with below-average cognitive abilities and an IQ of 74, but that he was able to adequately understand the nature of the legal proceedings and to assist in his own defense.

In May 2014, Hewitt entered into a DAP agreement wherein he entered a no-contest plea on the bomb scare count, and he also entered no-contest pleas on the counts of threatening injury by computer message and disorderly conduct, that latter of which were entered in exchange for a time-served disposition on the two misdemeanors and the dismissal of the remaining felony count. Under the DAP agreement, the bomb scare count would be dismissed if Hewitt complied

with certain conditions, including refraining from committing criminal offenses, refraining from contact with GoDaddy.com or its employees, complying with Health and Human Services assessments and recommended treatments, and keeping the circuit court informed of his current address.

The circuit court accepted Hewitt's pleas to the two misdemeanor counts after reviewing his signed plea questionnaire, conducting a plea colloquy, and ascertaining that there was a factual basis for the pleas based upon the preliminary hearing. The court granted sentence credit exceeding the time imposed on each of the misdemeanors, resulting in sentences of time served. The court further found that Hewitt was knowingly and voluntarily proffering a no-contest plea to the bomb scare count, and it deferred acceptance of that plea for a period of three years, with the understanding that the charge would be dismissed if Hewitt complied with the terms of the DAP agreement.

In April 2015, the parties entered an amended DAP agreement based upon Hewitt's noncompliance with the original agreement. The amended agreement extended the term of the DAP agreement to April 6, 2018, and added additional conditions that required Hewitt to comply with terms of probation in Rusk County and Chippewa County cases; to undergo a psychological evaluation and cooperate with treatment recommendations; to not possess any devices capable of electronic communication; to "be in the presence of an adult relative at all times"; to not contact any law enforcement agencies or district attorney's offices except upon fully identifying himself for valid business; and to comply with bond conditions in this case. The amended agreement further provided that the State would have 90 days after the expiration of the agreement to file a petition to show cause that Hewitt had violated the agreement.

The State moved to vacate the DAP agreement on April 27, 2018, within 90 days after its expiration, based upon Hewitt's conviction in a new Eau Claire County case. The circuit court granted the motion, vacated the DAP agreement, accepted the previously proffered no-contest plea to the bomb scare count, ordered that Hewitt's most recent presentence investigation report (PSI) be updated, and set the matter for sentencing.

After hearing from the parties at the sentencing hearing, the circuit court discussed proper sentencing factors related to the gravity of the offense and Hewitt's character, and it explained how they related to the court's goals of protecting the public and not unduly depreciating the seriousness of the offense. The court emphasized the fear Hewitt had caused his victims and Hewitt's failure to acknowledge or take responsibility for his "odd" behavior—which had taken a great deal of effort and continued over an extended period of time. The court could not determine whether Hewitt suffered from a significant mental illness requiring treatment or was just "so utterly divorced from responsibility for his actions that he just needs to be imprisoned," but it concluded that Hewitt needed to be segregated from society because nothing else had worked to stop Hewitt's behavior. The court then sentenced Hewitt to one and one-half years' initial confinement followed by two years' extended supervision, to be served consecutively to the sentence in Hewitt's Eau Claire County case.

Upon reviewing the record, we agree with counsel's description, analysis, and conclusions that the plea colloquy was adequate and that the circuit court properly exercised its sentencing discretion and imposed a valid sentence on the bomb scare count. This exercise of discretion includes the condition of supervision restricting Hewitt's access to computers—which was responsive to the crimes leading to the extension and revocation of the DAP agreement, as well as the crimes of conviction in this case. Although counsel does not discuss it, the record

also does not disclose any defect in the plea colloquies and sentences on the misdemeanor charges. We further note that Hewitt himself does not allege that he misunderstood the nature of the charges or his constitutional rights when he entered his pleas, and he does not identify any defect in any of his sentences. We will therefore not discuss those issues further. We will briefly address why the additional issues Hewitt raises in his response to the no-merit report also lack arguable merit.

First, the issue of counsel's performance during postconviction and appellate proceedings is not before us in this direct appeal. An appeal from a criminal conviction "brings before the court all *prior* nonfinal judgments, orders and rulings adverse to the appellant." WIS. STAT. RULE 809.10(4) (emphasis added).

Second, none of Hewitt's allegations would be sufficient to warrant a hearing on a claim of ineffective assistance of his trial counsel. Hewitt alleges that he was actually innocent; that incriminating statements he made to police were taken out of context; and that the forensic evidence linking his electronic devices to the threatening texts and emails was flawed. However, Hewitt himself was in a better position than his trial counsel to evaluate his actual innocence, and he has not identified any evidence that has come to light after he entered his pleas that would have affected his decision to accept the highly favorable plea deal negotiated by trial counsel.

Third, Hewitt does not specify how he believes the State breached the DAP agreement. To the extent Hewitt may be complaining that his conviction in the Eau Claire County case occurred after the three-year term of the original DAP agreement, he ignores his own agreement to amend and extend the term of the DAP agreement in order to avoid the vacation of the agreement following cases he incurred in Rusk County and Chippewa County in 2015.

Fourth, the appellate record contains all of the materials specified in WIS. STAT. RULE 809.15(1)(a). During the briefing of this appeal, a dispute arose between Hewitt and counsel as to whether appellate counsel had sent Hewitt copies of all of the materials in the case file. However, Hewitt has not established that any of the materials he claims to be missing would be material to any potential appellate issue—i.e., that they would provide grounds for either plea withdrawal or resentencing. As we have already discussed, Hewitt has not alleged that he misunderstood the nature of the charges or his constitutional rights, and the record shows no flaw in the plea colloquies or the sentences.

Finally, we note that Hewitt's pleas forfeited the right to raise other nonjurisdictional defects and defenses, aside from a double jeopardy exception that does not apply here. *See State v. Kelly*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Michelle Erdman is relieved of any further representation of Dustin Hewitt in this matter pursuant to 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