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DISTRICT IV

November 19, 2026

To:

Hon. Daniel S. Diehn
Circuit Court Judge
Electronic Notice

Jean Sahr
Clerk of Circuit Court
Jackson County Courthouse
Electronic Notice

John Blimling
Electronic Notice

David J. Susens
Electronic Notice

Justin J. Barhyte 727932
Stanley Correctional Institution
100 Corrections Dr.
Stanley, WI 54768

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

2025AP404-CRNM State of Wisconsin v. Justin J. Barhyte (L.C. # 2023CF83)

Before Kloppenburg, Ziegler, and York, 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).

Attorney David Susens, appointed counsel for appellant Justin Barhyte, 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 addresses whether there would be arguable merit to a challenge to Barhyte's plea or sentencing. Barhyte was provided a copy of the no-merit report, and he has not filed a response. Based on our review of the no-merit report, as well as our independent review of the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744 (1967), we agree with

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

counsel that there are no issues of arguable merit. We summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Barhyte with one count of first-degree sexual assault of a child and one count of second-degree sexual assault of a child. Pursuant to a plea agreement, Barhyte pled no contest to second-degree sexual assault of a child and the first-degree sexual assault count was dismissed and read in for sentencing purposes. The circuit court sentenced Barhyte to twelve years of initial confinement and eight years of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Barhyte's plea. We agree with counsel's assessment that a challenge to Barhyte's plea would be wholly frivolous. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Barhyte signed, satisfied the court's mandatory duties to personally address Barhyte and determine information such as Barhyte's understanding of the nature of the charge, the range of punishments he faced, and the constitutional rights he waived by entering his plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication in the record of any other basis for plea withdrawal. A valid no-contest plea constitutes a waiver of all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to Barhyte's sentence. We agree with counsel that this issue lacks arguable merit. Our review of

a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Barhyte was afforded the opportunity to address the circuit court before sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Barhyte's character and rehabilitative needs, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court awarded Barhyte 14 days of sentence credit, on counsel's stipulation. The court also awarded restitution in the amount stipulated by the parties. We discern no nonfrivolous basis to challenge the court's exercise of its sentencing discretion.

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***, 386 U.S. at 744.

Therefore,

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

IT IS FURTHER ORDERED that Attorney David Susens is relieved of any further representation of Justin Barhyte 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