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**DISTRICT II**

July 10, 2024

To:

Hon. Faye M. Flancher  
Circuit Court Judge  
Electronic Notice

Patricia Sommer  
Electronic Notice

Amy Vanderhoef  
Clerk of Circuit Court  
Racine County Courthouse  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Jonathan W. Sparks #523430  
New Lisbon Correctional Inst.  
P.O. Box 2000  
New Lisbon, WI 53950-2000

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

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2022AP1688-CRNM      State of Wisconsin v. Jonathan W. Sparks (L.C. #2015CF1643)

Before Gundrum, P.J., 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).**

Jonathan W. Sparks appeals from a judgment, entered following his guilty plea, convicting him of first-degree reckless homicide. Sparks's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Sparks was advised of his right to file a response, and he has responded. After reviewing the record, counsel's report, and Sparks's response, we conclude that there are no

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

On June 14, 2008, Sparks fired a gun over a fence, shooting and killing Jamaal Staniel. The investigation was ongoing for years. On November 9, 2015, the State charged Sparks with first-degree reckless homicide with use of a dangerous weapon.

On March 12, 2020, pursuant to a plea agreement, Sparks pled guilty to first-degree reckless homicide. The State agreed to strike the use-of-a-dangerous-weapon enhancer and recommend a sentence of fifteen years' initial confinement with a length of extended supervision to be determined by the circuit court. On April 23, 2021, the circuit court sentenced Sparks to fifteen years' initial confinement and fifteen years' extended supervision. This no-merit appeal follows.

We first agree with counsel's analysis and conclusion that any challenge to the validity of Sparks's plea would lack arguable merit. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Sparks's plea. *See* WIS. STAT. § 971.08; *Bangert*, 131 Wis. 2d at 261-62; *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

Sparks has responded to the no-merit report. He argues there are issues of arguable merit surrounding his sentencing. Specifically, Sparks wished to be represented at sentencing by his former State Public Defender ("SPD") appointed attorney and believes he received ineffective assistance of counsel from the attorney who did represent him at sentencing.

To provide context for Sparks's assertions, Sparks's former attorney had been forced to withdraw before Sparks's sentencing because his law license was suspended by the supreme court for sixty days. The SPD appointed new counsel to represent Sparks at sentencing. The circuit court gave time to see if the SPD would reappoint the former attorney to Sparks's case after the suspension was lifted; however, after it appeared the SPD would not reappoint Sparks's former attorney, the circuit court set the matter for sentencing with Sparks's new counsel. New counsel advised the circuit court that he would be prepared for sentencing.

Before sentencing, new counsel moved to withdraw on the basis that:

[Sparks] would like [his former attorney] reappointed to represent him for his sentencing hearing. [Sparks] is aware of the fact that [his former attorney] may not be able to be reappointed due to the State Public Defender Administrative Rules and he may be required to retain him privately or seek court appointment for him.

At sentencing, Sparks's counsel advised the court that he had filed the withdrawal motion but in the event the court denied it, he was ready to proceed to sentencing. The State objected to the withdrawal motion, advising the circuit court that it had discussed the matter with Sparks's former attorney, and Sparks's former attorney did not believe he would be back on this case. Given the age of the case, the State argued the case needed to be resolved now. The State emphasized Sparks had accumulated more than five years of sentence credit in the Racine County Jail and he "needs to get out of the jail and somewhere where he's going to have a little bit more of an opportunity to take advantage of things in a setting."

The circuit court denied the withdrawal motion. The court stated,

Mr. Sparks, I understand that you worked with [former attorney] for such a long time that it would be a preference to proceed with him, but there is no guarantee at this point that it would happen.

As noted, this is a case for 2015. You've been, I think, in the jail at least 5 years. I am going to deny the motion to withdraw at this time, and we will proceed with sentencing today.

There is no issue of arguable merit regarding the circuit court's denial of Sparks's new counsel's withdrawal motion. The mere fact that Sparks had a preference for a different attorney at sentencing is not a valid basis for withdrawal. See *State v. Wanta*, 224 Wis. 2d 679, 703, 592 N.W.2d 645 (Ct. App. 1999) (defendant's requests for new counsel insufficient when unsupported by evidence of attorney incompetence, complete breakdown in communication, or conflict of interest); see also *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006) ("[T]he right to counsel of choice does not extend to defendants who require counsel to be appointed for them."); *State v. Jones*, 2010 WI 72, ¶4, 326 Wis. 2d 380, 797 N.W.2d 378.

As to Sparks's assertion that he received ineffective assistance of counsel at sentencing, Sparks believes counsel was ineffective for not getting the sentencing hearing delayed in the event that the circuit court denied counsel's withdrawal motion. As a result, Sparks believes neither he nor his counsel was prepared for sentencing. Sparks believes counsel was not prepared for sentencing because he told the court on two occasions he came into this case late. Sparks also emphasizes that Sparks told the circuit court he did not talk to his attorney about sentencing.

The record reflects that at the time Sparks was being sentenced, he was receiving a substantial break in the State's sentencing recommendation based on Sparks's cooperation in another case. Sparks's sentencing attorney told the circuit court that he was not there when

Sparks's former attorney negotiated with the State based on Sparks's cooperation and "I'm coming in late, and as I told Mr. Sparks, a lot of times the [c]ourt knows what he did." In sentencing Sparks, the circuit court stated:

As noted by [the State], you have done some things which have taken another very dangerous individual off the streets, and I believe you should be given credit for that.

I agree under all the circumstances that the recommendation that's being made in the presentence investigation, given all of that, is a high recommendation.<sup>[2]</sup>

So, today, I am going to give you credit, Mr. Sparks, for what you've done, and I will follow the State's recommendation of 15 years of initial incarceration, and I'll place you on extended supervision afterward for another 15 years for a total sentence of 30.

We conclude Sparks has failed to identify any issue of arguable merit regarding counsel's representation at sentencing.

With regard to the circuit court's sentencing discretion, our review of the record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentence was not so excessive so as to shock the public's sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the court's sentencing discretion.

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<sup>2</sup> The presentence investigation ("PSI") author recommended Sparks be sentenced to forty years' initial confinement and ten years' extended supervision. Although the PSI was filed in 2017 and Sparks was sentenced in 2021, the circuit court relied on the PSI because Sparks had been in custody the entire time and "not a whole lot was going to be different." We agree with counsel's analysis and conclusion that there is no basis to argue that a new PSI report should have been prepared prior to sentencing.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Patricia Sommer of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of further representation of Jonathan W. Sparks in this matter. *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*