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**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT III**

October 22, 2024

To:

Hon. James C. Babler  
Circuit Court Judge  
Electronic Notice

Sharon Millermon  
Clerk of Circuit Court  
Barron County Justice Center  
Electronic Notice

Roberta A. Heckes  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Delbert P. Whitehead 527548  
Stanley Correctional Inst.  
100 Corrections Dr.  
Stanley, WI 54768

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

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2023AP568-CRNM      State of Wisconsin v. Delbert P. Whitehead  
(L. C. No. 2021CF375)

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).**

Counsel for Delbert Whitehead has filed a no-merit report concluding that no grounds exist to challenge Whitehead's convictions for false imprisonment and strangulation and suffocation, both counts as acts of domestic abuse. Whitehead was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit

to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup>

The State charged Whitehead with false imprisonment, second-degree recklessly endangering safety, strangulation and suffocation, criminal damage to property, two counts of misdemeanor battery, and felony intimidation of a victim—with all but the intimidation count as acts of domestic abuse. The charges arose from allegations that Whitehead hit Wendy,<sup>2</sup> his live-in girlfriend, with a hammer; tied her up with duct tape for approximately twenty minutes; sprayed butane around her; and threatened to light the butane on fire. The State further alleged that on other occasions, Whitehead punched Wendy several times on the forehead and mouth; choked her to the point that she nearly lost consciousness; burned her left leg with a butane torch; “karate chopped her in the throat”; and broke her smartphone valued at \$1,100. According to the complaint, Wendy reported that she was afraid to call the police when the abuse began because Whitehead threatened to kill her and her children.

On the day before a scheduled arraignment, Whitehead opted to enter into a plea agreement. In exchange for Whitehead’s guilty pleas to false imprisonment and strangulation and suffocation, with both counts as acts of domestic abuse, the State agreed to recommend that the remaining counts from this case and another case be dismissed and read in. The State also agreed to recommend a sentence consistent with the recommendation made in the presentence investigation report (PSI). Out of a maximum possible twelve-year sentence, the circuit court imposed

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

<sup>2</sup> Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

consecutive sentences resulting in an aggregate ten-year sentence, consisting of six years of initial confinement followed by four years of extended supervision.

The no-merit report addresses whether Whitehead knowingly, intelligently and voluntarily entered his guilty pleas; whether there was an adequate factual basis for the pleas; whether a nonfrivolous challenge to the convictions could be made based on the circuit court's failure to hold an arraignment; whether there are any grounds to challenge the effectiveness of Whitehead's trial counsel; and whether the circuit court erroneously exercised its sentencing discretion. Upon reviewing the record, we agree with counsel's analysis and conclusion that there is no arguable merit to any of these issues.

We note that at the plea hearing, the circuit court failed to personally advise Whitehead of the potential deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). However, in order to obtain relief because of such an omission, a defendant must show that the plea is likely to result in deportation, exclusion from admission, or denial of naturalization. *See State v. Negrete*, 2012 WI 92, ¶26, 343 Wis. 2d 1, 819 N.W.2d 749. Nothing in the record before us suggests that Whitehead would be subject to adverse immigration consequences. The no-merit report otherwise sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

In addition to the issues discussed by counsel, we note that Whitehead moved to appear by videoconference and waived the right to personally appear at the plea and sentencing hearings following colloquies at both proceedings. *See State v. Soto*, 2012 WI 93, ¶¶46-49, 343 Wis. 2d 43, 817 N.W.2d 848. Any challenge to those proceedings based on Whitehead's appearance by videoconference would therefore lack arguable merit.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Roberta A. Heckes is relieved of her obligation to further represent Delbert Whitehead 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*