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**DISTRICT I**

June 24, 2025

To:

Hon. Jean M. Kies  
Circuit Court Judge  
Electronic Notice

John Blimling  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
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Gerald Betton 719528  
Fox Lake Correctional Institution  
W10237 Lake Emily Road  
Fox Lake, WI 53933

Jill Marie Skwor  
Electronic Notice

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

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2024AP612-CRNM      State of Wisconsin v. Gerald Betton (L.C. # 2021CF3535)

Before White, C.J., Geenen, and Colón, 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).**

Gerald Betton appeals a judgment convicting him of one count of homicide by the use of a vehicle with a detectable amount of a controlled substance in his blood and an order denying his motion for postconviction relief. Appellate counsel, Jill Marie Skwor, 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> Betton was advised of his right to file a response and has filed multiple responses. Appellate

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

counsel filed a supplemental no-merit report. Upon consideration of the no-merit report, the responses, the supplemental report, and an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

On August 18, 2021, the State charged Betton with one count each of second-degree reckless homicide, second-degree recklessly endangering safety, carrying a concealed weapon, and possession of narcotics. According to the complaint, Betton drove a speeding car through a red light at the intersection of North 27th Street and West Wisconsin Avenue in Milwaukee, striking a city bus. A pedestrian, who was a few feet away, was knocked down from the impact but not injured. However, the crash did result in the death of Betton's passenger, J.B. Betton was extricated from the car by first responders and transported to a nearby hospital for his injuries. Responding police officers also saw a .40 caliber handgun on the floorboard of the car and recovered a baggie containing nine oxycodone hydrochloride pills from Betton's pocket at the hospital. A driver record check showed Betton did not have a Wisconsin driver's license and that his Illinois driver's license expired about a month prior to the collision. Results from a toxicology report showed a restricted controlled substance in Betton's blood.

Ultimately, Betton pled guilty to an amended charge of homicide by operation of a motor vehicle with a detectable amount of a controlled substance in his blood. The remaining charges were dismissed and read in. The circuit court conducted a colloquy with Betton and accepted his plea. The court sentenced Betton to seven years and six months of initial confinement followed by five years of extended supervision.

Following sentencing, Betton filed a postconviction motion for resentencing, arguing that the circuit court erroneously found him eligible for both the Challenge Incarceration Program and the Substance Abuse Program when he was statutorily precluded from the programs. *See* WIS. STAT. §§ 302.045, 302.05, 940.09(1)(am). Betton argued that the court sentenced him based upon inaccurate information.

The postconviction court denied the motion. While the court acknowledged that it mistakenly found Betton eligible for the programs, it stated that its sentencing decision was not based upon its mistaken belief about Betton's program eligibility. This no-merit report follows.

Appellate counsel's no-merit report addresses three issues: (1) whether the circuit court properly accepted Betton's plea; (2) whether the court erroneously exercised its sentencing discretion; and (3) whether the postconviction court should have granted Betton's motion for resentencing. In his response, Betton contends that the court's sentencing decision was based upon inaccurate information because it mistakenly believed that he was eligible for the Challenge Incarceration Program and the Substance Abuse Program when issuing his sentence. Betton also contends that the court mistakenly believed that Betton was on bail for an Illinois case and on house arrest at the time of the offense. He also argues that trial counsel was ineffective for failing to correct the court's mistakes.

With regard to Betton's guilty plea, our review of the record—including the plea questionnaire/waiver of rights form, the addendum, the jury instruction, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. These

obligations exist specifically to help ensure the validity of any plea. We thus agree with appellate counsel's conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that Betton's pleas were anything other than knowing, intelligent, and voluntary.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider additional factors. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the court's discretion. *Id.*

Our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors. The resulting sentence was within the potential maximums authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and 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).

The no-merit report lastly addresses whether the postconviction court should have granted Betton's motion for resentencing, which ties directly to Betton's claim that the circuit

court sentenced him based upon inaccurate information. When a defendant contends that the circuit court relied on inaccurate information, the defendant may pursue a claim for resentencing only upon a showing that the court actually relied on inaccurate information in fashioning the sentence. *See State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. The record is clear that the court did not rely either on its mistaken belief about Betton’s program eligibility or its mistaken belief that Betton was out on bail and on house arrest at the time of this offense.<sup>2</sup> The court thoroughly considered the facts of the case, Betton’s character, the need to protect the public, and the dangers Betton’s conduct posed. Indeed, only after issuing its sentencing decision did the court make note of Betton’s program eligibility—the mistake did not impact the length or structure of Betton’s sentence. It follows then that trial counsel was not ineffective for failing to draw attention to the court’s mistakes, since the record is clear that the court did not rely upon those errors. *See State v. Allen*, 2017 WI 7, ¶46, 373 Wis. 2d 98, 890 N.W.2d 245 (“It is well-established that trial counsel could not have been ineffective for failing to make meritless arguments.”). Accordingly, there is no arguable merit to a claim that the postconviction court should have granted Betton’s motion for resentencing.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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<sup>2</sup> While on bond in this case, Betton was arrested in Illinois; the charges stemming from this arrest were not pursued by the state of Illinois.

IT IS FURTHER ORDERED that Attorney Jill Marie Skwor is relieved of further representation of Gerald Betton 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*