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**DISTRICT II**

April 8, 2026

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
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Michael J. Herbert  
Electronic Notice

Marc A. Holm #409796  
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P.O. Box 900  
Waupun, WI 53963-0900

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

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2024AP1680-CRNM      State of Wisconsin v. Marc A. Holm (L.C. #2020CF88)

Before Neubauer, 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).**

Marc A. Holm appeals from a judgment convicting him, following a jury trial, of felony intimidation of a victim and two counts of disorderly conduct, all as acts of domestic abuse, and one count of physical abuse of a child. Attorney Michael J. Herbert has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24);<sup>1</sup> *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report

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

addresses whether the evidence presented at trial was sufficient to support the jury's guilty verdicts. Holm was sent a copy of the report, and has filed a response raising additional potential issues. Upon reviewing the entire Record, as well as the no-merit report and Holm's response, we conclude that there are no arguably meritorious appellate issues. Accordingly, we summarily affirm.

The State charged Holm with seven offenses related to reports that Holm was physically abusive toward his then-fiancée, Vicky; Vicky's seven-year-old daughter, Annie; and six-month-old baby Amanda, who is Vicky and Holm's daughter together.<sup>2</sup> A three-day jury trial was held. The State presented testimony and physical evidence from Vicky, Annie, law enforcement personnel, a medical expert specializing in issues related to child abuse, and a social worker assigned to investigate the allegations of abuse in the home. Holm presented a vigorous defense, including testifying on his own behalf and introducing into evidence recordings Holm had made of Vicky using his cell phone to allegedly demonstrate that Vicky was emotionally unstable throughout the time in question. Holm's defense was essentially that he had engaged in the questioned conduct in attempts to prevent Vicky from taking her own life.

The jury convicted Holm of felony intimidation of a victim and two counts of disorderly conduct for his conduct with Vicky and one count of physical abuse of a child for having harmed Annie. The jury acquitted Holm of one count each of disorderly conduct and battery related to Vicky. It also acquitted Holm of physical abuse of baby Amanda.

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<sup>2</sup> We use pseudonyms to protect the victims' rights to privacy.

After a sentencing hearing, the trial court sentenced Holm as follows: 60 days incarceration for the first disorderly conduct conviction; 1 year of initial confinement and 2 years of extended supervision for the physical abuse of Annie; 90 days incarceration for the second disorderly conduct conviction; and, finally, 2 years of initial confinement and 2 years of extended supervision for the most serious offense—felony intimidation of a victim. The court ordered all sentences to run consecutively. This no-merit appeal follows.

The no-merit report only discusses the sufficiency of the evidence to support the convictions. A jury trial has many components which must be examined for the existence of potential appellate issues, *e.g.*, pretrial rulings, jury selection, evidentiary objections during trial, confirmation that the defendant’s election to testify is knowingly made or waiver of the right to testify is valid, use of proper jury instructions, propriety of opening statements and closing arguments, results of polling the jury, and, finally, sufficiency of the evidence. The no-merit report should also address whether the trial court erroneously exercised its discretion at sentencing or otherwise imposed an excessive sentence. By discussing only the sufficiency of the evidence, the no-merit report is incomplete.<sup>3</sup>

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<sup>3</sup> Counsel is reminded that the no-merit report must do more than address issues it anticipates may be raised by the appellant. Counsel has a duty to review the entire Record for potential appellate issues. A no-merit report serves to demonstrate to the court that counsel has discharged his or her duty of representation competently and professionally and that the indigent defendant is receiving the same type and level of assistance as would a paying client under similar circumstances. *See McCoy v. Wisconsin Court of Appeals*, 486 U.S. 429, 438 (1988). Although this court has the duty to make an independent review of the entire Record, it places an unreasonable burden on the court when counsel fails to provide the necessary groundwork for consideration of potential issues. It is important that the no-merit report provide a basis for a determination that the no-merit procedure has been complied with. *See State v. Allen*, 2010 WI 89, ¶¶58, 61–62, 72, 328 Wis. 2d 1, 786 N.W.2d 124 (when an issue is not raised in the no-merit report, it is presumed to have been reviewed and resolved against the defendant so long as the court of appeals follows the no-merit procedure). We caution Attorney Michael J. Herbert to note in future no-merit reports that he did consider all aspects of a jury trial and sentencing.

Our review starts with the pretrial procedure. First, there do not appear to have been any irregularities at the initial appearance or preliminary hearing. We observe that the trial court made certain pretrial rulings in Holm’s favor, including granting his motion for the court to review confidential victim records in camera. In any event, a valid conviction cures any defects relating to bindover unless they were preserved by an interlocutory appeal. *See State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991); *State v. Wolverton*, 193 Wis. 2d 234, 254, 533 N.W.2d 167 (1995). Further, the court did not err in denying Holm’s motion to sever the charges for trial—two or more crimes may be jointly charged in a single complaint or information when they are of the same or similar character, or are based on the same act or transaction, or are based on multiple transactions that are connected together or constitute parts of a common scheme or plan. *See* WIS. STAT. § 971.12(1). The court also properly allowed the State to amend the information to include specific date ranges for the charged offenses. *See* WIS. STAT. § 971.29 (providing the trial court may permit the amendment of an information within a reasonable time after arraignment so long as the defendant’s rights to notice, a speedy trial, and opportunity to defend are not prejudiced).

During jury selection, several jurors were excused for cause without objection from the defense and there was no basis to object. At trial, the court properly exercised its discretion regarding evidentiary objections. An adequate colloquy established that Holm’s decision to testify was knowingly and voluntarily made. There was no improper argument during opening or closing arguments. The jury was properly instructed. Jury polling at the reading of the verdicts confirmed that the verdicts were unanimous. No issue of arguable merit exists from the trial procedure.

The no-merit report addresses whether there is arguable merit to a challenge to the sufficiency of the evidence to support the guilty verdicts. When reviewing the sufficiency of the evidence to support a conviction, the test is whether “the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Therefore, we “will uphold the conviction if there is any reasonable hypothesis that supports it.” *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. As counsel observes and as set forth above, there was ample evidence presented from which a jury could find Holm guilty of the offenses for which he was convicted. This court is satisfied that the no-merit report correctly analyzes this issue as without merit.

In his response to the no-merit report, Holm first raises the issue of ineffective assistance of trial counsel. He argues that counsel failed to present various items of allegedly exculpatory evidence at trial and the lack of appropriate impeachment of Vicky on cross-examination. Our review of the Record does not reveal any basis to challenge Holm’s trial counsel’s performance. *See generally State v. Sholar*, 2018 WI 53, ¶32, 381 Wis. 2d 560, 912 N.W.2d 89 (discussing the standard for claims of ineffective assistance of counsel). In particular, trial counsel was able to present Holm’s cell phone recordings of incidents between Vicky and Holm, successfully keep certain damaging evidence out, and counsel secured an acquittal on three of the charges and a sentence lower than that recommended by the State.

Further, although Holm complains that there was additional evidence that he would have liked introduced at trial, our review of the Record shows no erroneous exercises of discretion in the trial court’s evidentiary rulings. More specifically, there was no error in excluding an email

from one of Holm's relatives that the court determined was not relevant to the issues at trial or in excluding evidence of Vicky's alleged past suicide attempts.

Holm next argues that the trial court imposed an excessive sentence here and seeks sentence modification. However, a challenge to his sentence would also lack arguable merit. Our review of a sentence determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that the defendant was afforded an opportunity to comment on the PSI and address the court, which he did. Trial counsel presented an alternate PSI and sentencing memorandum on Holm's behalf, and numerous community members offered letters and words of support for Holm to the court. The trial court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶ 39-46, 270 Wis. 2d 535, 678 N.W.2d 197.

Regarding the severity of the offenses, the trial court noted the abusive language and the violence associated with the offenses. It also noted the significant negative impact that the offenses had on Vicky, Annie, and, to some extent, baby Amanda. With respect to the defendant's character, the court cited to the defendant's criminal history and his notable need to exercise control and power over others. It concluded that a prison term was necessary to protect the community and to "hold Mr. Holm accountable for his actions." The court then sentenced Holm to three years and five months of initial confinement and four years of extended supervision. It also awarded 75 days of sentence credit; imposed standard costs and conditions of supervision, including no contact with Vicky or Annie; and directed the defendant to provide a DNA sample.

As to Holm’s contention that the sentence imposed was excessive, there is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentence imposed here was not “so excessive and unusual and so disproportionate to the offenses committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *See State v. Grindemann*, 2002 WI App 106, ¶¶ 31-32, 255 Wis. 2d 632, 648 N.W.2d 507. For his convictions on two counts of disorderly conduct (class B misdemeanors), and one count each of physical abuse of a child (a class H felony) and intimidation of a victim (a class G felony), Holm faced a total of sixteen and one-half years of imprisonment. *See* WIS. STAT. § § 939.51(3)(b) (providing maximum imprisonment of 90 days for a Class B misdemeanor); 973.01(2)(b)8 and (d)5 (providing maximum terms of 3 years of initial confinement and 3 years of extended supervision for a Class H felony); 973.01(2)(b)7 and (d)4 (providing maximum terms of 5 years of initial confinement and 5 years of extended supervision for a Class G felony). There would be no arguable merit to a challenge to Holm’s sentence.

Upon our independent review of the Record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶ 81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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 Michael J. Herbert is relieved from further representing Marc A. Holm in this appeal. *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*