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DISTRICT I

September 15, 2026

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
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Trayveion Dashawn Somerville 725677
Racine Youthful Offender Corr. Facility
P.O. Box 44380
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You are hereby notified that the Court has entered the following opinion and order:

2025AP718-CRNM State of Wisconsin v. Trayveion Dashawn Somerville
(L.C. # 2023CF759)

Before Colón, P.J., Geenen, and Petrashek, 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).

Trayveion Dashawn Somerville appeals from his judgment of conviction for two counts of the manufacture and delivery of fentanyl, and from the order denying his postconviction motion seeking sentence modification. His appellate counsel filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).¹ Somerville received a copy of the report and filed a response. Upon this court's independent review of the

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

record as mandated by *Anders*, counsel's report, and Somerville's response, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. See WIS. STAT. RULE 809.21.

Somerville was charged in February 2023 with nine counts of drug-related charges and bail jumping. These charges arose from four controlled buys of heroin and cocaine by an undercover agent of the Drug Enforcement Administration over a three-month period. The drugs tested positive for fentanyl.

Somerville was out on bail in a separate Milwaukee County Circuit Court matter at the time of his arrest. Additionally, after posting \$10,000 cash bail in this matter, he was arrested in Waukesha County in June 2023 on similar charges.

Somerville opted to resolve the charges in this case with a plea. In exchange for guilty pleas to two of the fentanyl charges, the remaining seven counts were dismissed but read in for sentencing purposes. The circuit court imposed concurrent sentences of six years of initial confinement followed by six years of extended supervision on each of the two charges, to be served consecutively to his sentence in the Waukesha County matter, which had already been resolved. The court also made Somerville eligible for earned release programming after serving five years of his initial confinement term, observing that his sentence in Waukesha County had that same five-year requirement.

Somerville subsequently filed a postconviction motion seeking sentence modification. In the motion, Somerville explained that because his sentences in both matters required him to serve five years of initial confinement before he was eligible for programming, the Department of Corrections (DOC) had determined that he could not participate in programming during his

sentence for this case due to insufficient time. He therefore argued that DOC's determination was a new factor warranting sentence modification, and requested that the five-year requirement be removed.

The circuit court rejected his argument. It found that the determination was not a new factor because its comments at sentencing reflected that "it understood that the consecutive disposition might create a problem for the eligibility finding in the Waukesha case." As such, the court stated that Somerville's sentence "was not predicated on an assumption that [Somerville] would necessarily be enrolled in an early release program or released any sooner than serving the full six years of consecutive confinement time," and therefore his "inability to participate in an early release program [was] not highly relevant to the sentence imposed."

The circuit court therefore denied Somerville's postconviction motion.² This no-merit appeal follows.

In the no-merit report, appellate counsel addresses three issues: whether there would be arguable merit to appealing the validity of Somerville's pleas; whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Somerville; and whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in denying Somerville's postconviction motion seeking sentence modification. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of any of these issues.

² The circuit court did, however, order that Somerville's judgment of conviction be amended to reflect one additional day of sentence credit.

With regard to Somerville's pleas, the no-merit report discusses whether they were knowingly, voluntarily, and intelligently entered. The record reflects that the plea colloquy by 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, ¶¶23, 34-35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court confirmed that Somerville signed and understood the plea questionnaire and waiver of rights form, which further demonstrates that his pleas were knowingly, voluntarily, and intelligently entered. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987). We therefore agree with appellate counsel's assessment that there would be no arguable merit to a challenge of the validity of Somerville's pleas.

With regard to sentencing, the no-merit report discusses, and the record reflects, that the circuit court properly exercised its discretion in considering proper and relevant sentencing objectives and factors. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court noted that Somerville was only 20 years old and had no juvenile record. However, it also observed that Somerville had made calls from jail indicative of attempting to continue his drug dealing. Additionally, the court emphasized the danger of fentanyl, stating that "[a]ny single person who took that fentanyl that thought it was heroin absolutely could have died."

Furthermore, Somerville's sentences are within the statutory maximums, and thus are presumed not to be unduly harsh or unconscionable. See *State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. We therefore agree with appellate counsel's conclusion that there would be no arguable merit to a challenge of Somerville's sentences.

Finally, the no-merit report discusses the circuit court's denial of Somerville's postconviction motion requesting the removal of the five-year requirement before becoming eligible for prison programming. In his response to the no-merit report, Somerville renews this request.

As noted above, the circuit court found that Somerville's inability to participate in early release programming was not a new factor. A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties." *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). Here, the court recognized at sentencing that there could be issues related to the DOC's administration of the programs based on the structure of Somerville's sentences in this case and his Waukesha County sentence. Furthermore, the court stated that the programming eligibility issue was not highly relevant to the sentence imposed, as its primary intent was to ensure that Somerville served at least five years of his term of initial confinement before becoming eligible for programming.

Therefore, the no-merit report concludes that the court did not erroneously exercise its discretion in denying Somerville's motion for sentence modification. We agree with that conclusion.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Somerville further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney David Malkus and Attorney Brett Lee McKellar are relieved of further representation of Somerville in this matter. *See* 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