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DISTRICT II

October 14, 2026

To:

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Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

John Blimling
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Mark S. Rosen
Electronic Notice

Kurtis W. Berberich, #320097
Fox Lake Correctional Institution
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You are hereby notified that the Court has entered the following opinion and order:

2025AP2442-CRNM State of Wisconsin v. Kurtis W. Berberich (L.C. #2022CF314)

Before Lazar, P.J., Gundrum, and Grogan, 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).

Appointed counsel for Kurtis W. Berberich filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Berberich with a copy of the report, and both counsel and this court advised him of his right to file a response, which he has done.² Counsel then filed a supplemental response addressing

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

² On Berberich's request, this court considers only his January 27, 2026, filing as his no-merit response and not his subsequent related filings.

issues Berberich raised. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the Record, we further conclude there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgment of conviction.

Berberich was charged with several felonies after an incident in which he beat up his elderly parents, then-ages 65 and 70, in front of his minor son. Pursuant to an agreement with the State, Berberich pled guilty or no contest to one count of Physical Abuse of an Elder Person, Intentionally Cause Bodily Harm, Likely to Produce Great Bodily Harm, Domestic Abuse, contrary to WIS. STAT. §§ 940.198(2)c, 939.50(3)(f), and 968.075(1)(a); one count of Physical Abuse of an Elder Person, Intentionally Cause Great Bodily Harm, Domestic Abuse, contrary to WIS. STAT. §§ 940.19(2)(a), 939.50(3)c, and 968.075(1)(a); and one count of Cause Mental Harm to a Child, contrary to WIS. STAT. §§ 948.04(1), and 939.50(3)(f). Two counts of attempted first-degree intentional homicide were dismissed outright as part of the agreement. The circuit court imposed an aggregate sentence of 27 years of initial confinement and 14 years of extended supervision. This no-merit appeal follows.

The no-merit report discusses whether the circuit court erred in rejecting Berberich's plea of not guilty by reason of mental disease or defect (NGI) based on the examining doctors' conclusions; whether there would be arguable merit to a claim that Berberich did not knowingly, intelligently, or voluntarily enter his pleas; and whether there would be any merit to a challenge to the circuit court's sentence. We address each of these potential issues briefly below, but note that in his response to the no-merit report, Berberich concedes that "the 3 issues [appointed appellate counsel] mentions were complete non[-]issues."

First, we agree with the conclusion in the no-merit report that any challenge to the rejection of Berberich's NGI plea would be meritless. As noted in the report, the examining doctors independently concluded that there would be no basis upon which a jury could conclude that Berberich was not criminally responsible for his actions on the night he battered his parents. Berberich admitted multiple times that he was under the influence of alcohol and psilocybin mushrooms during the incident. A voluntarily induced state of intoxication by drugs or alcohol or both does not constitute a mental disease or defect. See WIS JI—CRIMINAL 605 (2011); *State vs. Kolisnitschenko*, 84 Wis. 2d 492, 267 N.W.2d 321 (1976); *Gibson vs. State*, 55 Wis. 2d 110, 197 N.W.2d 813 (1972). There is no arguable merit to this issue.

The no-merit report further satisfies this court that the plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Berberich was waiving, and other matters. The Record shows no other ground to withdraw the plea, nor any ineffective assistance of trial counsel related to the plea. There is no arguable merit to this issue.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. See *State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result well under the potential maximum sentence. There is no arguable merit to this issue.

Although he admits that there would be no merit to any challenge based on the issues discussed above, Berberich raises a slew of issues in his response that he claims defeat appointed

counsel's assertion that there are no potentially meritorious issues from which to appeal. Among his concerns, Berberich claims he was denied his right to file certain pretrial motions due to his trial counsels' conclusions that any such motions would be frivolous. He also specifically cites to issues regarding self-defense, multiplicity, attorney motions to withdraw, and non-litigated suppression motions.³

In Wisconsin, the general rule is that a guilty or no-contest plea waives all nonjurisdictional defects, including constitutional claims. *State v. Keltz*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. This rule is referred to as the “guilty-plea-waiver rule.” *Id.* By signing the written plea questionnaire, Berberich openly acknowledged that he was giving up his right to raise many of the challenges he now advances in his response. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627. There is no arguable merit to any of the pretrial concerns Berberich voices.

Contrary to Berberich's position, we also conclude that trial counsel and appointed appellate counsel did not perform deficiently; our review of the Record and other submissions before us confirms that there would be no basis on which to challenge counsels' performance.

³ Throughout the pretrial proceedings and again in his response on appeal, Berberich complains that the two attempted homicide charges were multiplicitous, arguing that the State violated his rights by charging him with multiple offenses as to each of his parents. However, with respect to his multiplicity issue raised in his response, our review establishes that the plea negotiations resolved that issue. The two allegedly multiplicitous counts concerning his parents were dismissed by the State outright as part of the agreement with Berberich. Instead, he pled guilty to only one count as to each parent, and a third count as to his son.

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).⁴

Our review of the Record discloses no other potential issues for appeal. 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 Mark S. Rosen is relieved from further representing Kurtis W. Berberich in this appeal. 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

⁴ To the extent that we do not specifically address issues raised in Berberich's response, we conclude that appointed counsel's supplemental response sufficiently concludes that such issues would be without merit. We do not address them further.