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**DISTRICT III**

March 21, 2023

To:

Hon. Thomas W. Clark  
Circuit Court Judge  
Electronic Notice

Jefren E. Olsen  
Electronic Notice

Michelle Weisenberger  
Clerk of Circuit Court  
Trempealeau County Courthouse  
Electronic Notice

Larry Patrick Nelson  
W13314 Whalen Road  
Ettrick, WI 54627

Winn S. Collins  
Electronic Notice

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

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2022AP1484-CRNM      State of Wisconsin v. Larry Patrick Nelson (L. C. No. 2020CF9)

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 Larry Nelson has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),<sup>1</sup> concluding that no grounds exist to challenge Nelson's convictions for two counts of felony bail jumping, one count of resisting or obstructing an officer, and one count of disorderly conduct. Nelson was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v.*

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

*California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. As explained below, however, we modify Nelson’s judgment of conviction to reflect that he was ordered to serve conditional jail time on Count 1, rather than Count 2. We summarily affirm the judgment of conviction as modified. *See* WIS. STAT. RULE 809.21.

The charges against Nelson arose from an incident that occurred on January 13, 2020. At trial, the State presented evidence that law enforcement and paramedics responded to a fire station at around 9:30 that evening, where Nelson was being treated by first responders. Nelson appeared agitated and paranoid, and he stated that people were poisoning his air, following him, and stalking him.

Nelson agreed to be transported by ambulance to a hospital. On the way, however, Nelson accused one of the paramedics of poisoning the oxygen that she was administering to him. Nelson unbuckled the seatbelts holding him to the cot inside the ambulance and stood up, which caused the paramedic to be concerned for Nelson’s safety because he was standing up in a moving vehicle. The paramedic testified that she was also concerned for her own safety “being in the back [of an ambulance] with someone who’s agitated, upset, paranoid, thinking that I’m trying to harm him.”

Because of Nelson’s behavior, the ambulance pulled over, and the driver radioed for police assistance. Nelson then exited the ambulance and went into the middle of the road, which was a two-lane highway. It was dark outside and was snowing heavily. There was traffic on the highway, and Nelson approached a passing car and attempted to open one of its doors, telling the

driver, “[T]hey aren’t real, help me, they aren’t real.” The paramedics repeatedly asked Nelson to “come back near the ambulance for safety,” but he remained in the middle of the road.

A sheriff’s deputy then arrived on the scene and saw Nelson in the roadway. Although Nelson did not initially follow the deputy’s orders to leave the roadway, he eventually did so. Nelson subsequently failed to comply with the deputy’s command to sit on the footboard on the side of the ambulance, and Nelson instead “started to move back down the ambulance.” The deputy then secured Nelson’s arm and made the decision to detain Nelson. The deputy testified that he did so because Nelson was attempting to leave the scene, but the deputy had not yet had the opportunity to investigate the nature of the paramedics’ call for aid. Nelson resisted the deputy’s efforts to put him in handcuffs, turned to face the deputy, and grabbed the deputy’s chest. Nelson ignored the deputy’s commands to stop resisting. Nelson and the deputy ended up on the ground, and Nelson began removing equipment from the deputy’s duty belt, including two handgun magazines and a flashlight. A police officer arrived, and together the officer and the deputy were able to subdue Nelson and place him in handcuffs.

The State also presented evidence at trial that, at the time of these events, Nelson was released on bond in two felony criminal cases—a 2017 Sauk County case and a 2020 Jackson County case. Nelson’s bond conditions in both cases required him not to commit any further crimes.

Nelson testified in his own defense at trial and disputed many of the allegations made by the State’s witnesses. The jury, however, found Nelson guilty of each of the charges against him. The circuit court withheld sentence and placed Nelson on probation for two years on each

count. The court ordered Nelson to serve ninety days of conditional jail time on the felony bail jumping count stemming from the 2017 Sauk County case.

At sentencing, the circuit court ordered the State to submit any request for restitution within sixty days. The State timely requested a total of \$99.62 in restitution. Nelson did not oppose the State's request for restitution or the amount requested. The court entered an amended judgment of conviction requiring Nelson to pay \$99.62 in restitution.<sup>2</sup>

Nelson later filed a pro se motion for sentence modification, noting that he had served twenty-eight days in jail and asking the circuit court to "deem [his] jail time complete." Nelson emphasized that since his sentencing hearing in this case, all charges in the 2017 Sauk County case against him had been dropped based on his agreement to pay a certain amount of restitution. The court denied Nelson's motion, concluding that even if Nelson had established the existence of a new factor for purposes of sentence modification, that new factor did not justify a modification of Nelson's conditional jail time.

The no-merit report addresses whether there are any issues of arguable merit regarding: (1) the circuit court's rulings on the parties' motions in limine; (2) jury selection; (3) the parties' opening statements and closing arguments; (4) the jury instructions; (5) Nelson's decision to testify in his own defense; (6) Nelson's invocation of his privilege against self-incrimination during cross-examination; (7) the sufficiency of the evidence to support the jury's verdicts; (8) the court's exercise of sentencing discretion; (9) sentence credit;

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<sup>2</sup> The Honorable Thomas W. Clark presided over Nelson's jury trial and entered his original judgment of conviction. The Honorable Rian W. Radtke entered the amended judgment of conviction. Judge Clark entered the subsequent order denying Nelson's pro se motion for sentence modification.

(10) restitution; and (11) the court's denial of Nelson's pro se motion for sentence modification. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

Following our initial review of the no-merit report and the appellate record, we questioned whether there would be arguable merit to a claim that Nelson's trial attorney was constitutionally ineffective by: (1) failing to challenge Nelson's competency; and (2) failing to assert a defense that Nelson was not guilty by reason of mental disease or defect. We therefore requested further input from appellate counsel regarding these potential issues. On March 13, 2023, we received a response stating that counsel "spoke with Mr. Nelson regarding the two issues identified in the court's order and he authorized me to advise the court he does not want to pursue either of the issues." Because Nelson does not want to pursue these issues, we do not address them further. Our review of the record discloses no other arguable basis for a claim that Nelson's trial attorney was constitutionally ineffective.

The no-merit report notes that during the circuit court's oral sentencing pronouncement, the court ordered Nelson to serve ninety days of conditional jail time on the felony bail jumping charge stemming from the 2017 Sauk County case. Although the Information did not specify which bail jumping charge pertained to which underlying case, the verdict forms at trial identified the charge stemming from the Sauk County case as Count 1. Nelson's judgment of conviction and amended judgment of conviction, however, state that Nelson was ordered to serve the conditional jail time on Count 2—the bail jumping charge stemming from the Jackson County case. This appears to be a clerical error, as the court's oral sentencing pronouncement unambiguously shows that the court intended the conditional jail time to apply to the bail jumping charge stemming from the Sauk County case. Accordingly, upon remittitur, the

court shall enter an amended judgment of conviction stating that Nelson was ordered to serve ninety days of conditional jail time on Count 1, rather than Count 2.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Jefren E. Olsen is relieved of any further representation of Larry Nelson 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*