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DISTRICT I

January 22, 2025

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Douglas C. McIntosh
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Frederick Marshall Wynn 197801
Columbia Correctional Institution
P.O. Box 950
Portage, WI 53901-0950

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

2024AP105-CRNM State of Wisconsin v. Frederick Marshall Wynn
(L.C. # 2022CF222)

Before Donald, P.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).

Attorney Douglas C. McIntosh, as appointed counsel for Frederick Marshall Wynn, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Wynn with a copy of the report, and both counsel and this court advised him of his right to file a response. Wynn has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our

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

independent review of the record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal.

The complaint alleged that on January 13, 2022, Wynn approached an eleven-year-old girl as she was walking to the bus stop, asked her if she drank or partied, grabbed her arm, and started walking her to his house. A citizen witness who was driving by saw Wynn with the girl. The witness intervened and ended up taking Wynn to a police station.

When interviewed, Wynn admitted he asked the girl if she partied, put his arm around her, and was going to take her for a drink. At the time, Wynn was out on bond in three other cases, and his bond conditions prohibited him from committing any new crimes. The State charged him with four counts: child enticement; two counts of felony bail jumping; and one count of misdemeanor bail jumping.

Wynn ultimately pled no-contest to child enticement and one count of felony bail jumping. The remaining charges were dismissed and read-in at sentencing. The circuit court imposed a fifteen-year sentence consisting of nine years of initial confinement and six years of extended supervision for the child enticement charge. The circuit court sentenced Wynn to 266 days in the House of Correction for the felony bail jumping charge and granted him 266 days of credit for a time served disposition.

The no-merit report addresses whether Wynn's pleas were entered knowingly, voluntarily, and intelligently. 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 charges, the rights Wynn was waiving, and other matters. The record shows no other ground to withdraw the pleas.² There is no arguable merit to this issue.

The no-merit report also addresses Wynn's sentences. The sentences are within the legal maximums. As to discretionary issues, the standards for the circuit court and this court 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 reasonable results. There is no arguable merit to this issue.

The circuit court made Wynn eligible for the Substance Abuse Program after serving seven-and-a-half years of initial confinement, but not for the Challenge Incarceration Program due to his age. The former determination was invalid, however, because Wynn is not statutorily eligible for the Substance Abuse Program: child enticement contrary to WIS. STAT. § 948.07 is a disqualifying offense. *See* WIS. STAT. § 302.05(3)(a)1. The no-merit report addresses whether this constitutes grounds to pursue a motion for sentence modification.

Even if Wynn's ineligibility for the Substance Abuse Program constitutes a fact unknown to the circuit court, we agree with counsel's assessment that there would be no arguable merit to a claim that Wynn's sentence should be modified. The record does not suggest that Wynn's eligibility for early release programming was highly relevant to the court's imposition of the

² Whether the remaining charges were to be dismissed outright or dismissed and read-in was not addressed until later in the hearing, when the circuit court clarified for the clerk that they should be dismissed and read-in. The court then explained to Wynn the operation of a dismissed and read-in offense, and asked if he understood; Wynn indicated that he did. We agree with counsel's assessment that while it would have been preferable for the court to discuss this matter before it adjudged Wynn guilty, there is no basis under these facts to pursue plea withdrawal.

sentence. *See State v. Harbor*, 2011 WI 28, ¶¶36-40, 333 Wis. 2d 53, 797 N.W.2d 828. This is particularly so given that the court made him eligible only after serving seven-and-a-half years of his nine years of initial confinement.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Douglas C. McIntosh is relieved of further representation of Wynn 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*