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110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**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

Leonard D. Kachinsky  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Joseph E. Powell 712282  
John C. Burke Correctional Center  
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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2023AP1784-CRNM      State of Wisconsin v. Joseph E. Powell (L.C. # 2021CF1100)

Before White, C.J., Donald, P.J., and Geenen, J.

**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).**

Joseph E. Powell appeals from a judgment, entered on his guilty plea, convicting him on one count of second-degree sexual assault of a child. Appellate counsel, Leonard D. Kachinsky, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).<sup>1</sup> Powell was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and

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

counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

According to the criminal complaint, thirteen-year-old L.J.H. met Powell at a gas station, and they exchanged sexually explicit text messages before having sexual intercourse. When Powell was arrested, he admitted to having sexual intercourse with L.J.H. and explained that he thought she was eighteen years old.

The State charged Powell with one count of second-degree sexual assault of a child who had not obtained sixteen years of age, contrary to WIS. STAT. § 948.02(2). He eventually agreed to plead guilty to the charge in exchange for the State not requesting any specific amount of prison time. The circuit court accepted Powell's plea and later sentenced him to seven years of initial confinement and seven years of extended supervision.

The no-merit report first discusses whether Powell "waived any non-jurisdictional issues" with his guilty plea. Counsel correctly notes that a valid guilty plea waives all nonjurisdictional defects and defenses, *see State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886, with a statutory exception for orders denying motions to suppress evidence, *see* WIS. STAT. § 971.31(10). We agree with appellate counsel's assessment that there is no arguably meritorious basis on which Powell could have sought to suppress evidence and that any other non-jurisdictional challenges that might exist are waived by the plea.

The no-merit report next addresses whether Powell's guilty plea was knowing, voluntary, and intelligent. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Powell's plea. *See* WIS. STAT. § 971.08; *Bangert*, 131

Wis. 2d at 261-62; *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We therefore agree with counsel’s conclusion that any challenge to the validity of Powell’s plea would lack arguable merit.<sup>2</sup>

The final issue the no-merit report addresses is whether the circuit court properly exercised its sentencing discretion. *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. Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. Further, the fourteen-year sentence imposed was well within the forty-year range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public’s sentiment. *See Ocanas v. State*,

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<sup>2</sup> In the no-merit report, counsel states that Powell “was provided with inaccurate information about lifetime GPS” tracking. When the circuit court asked if defense counsel had reviewed the “very onerous” bracelet requirement, the State informed the court that lifetime GPS would be required for Powell only if he had two convictions. In the no-merit report, appellate counsel says that Powell “was subject to lifetime GPS [tracking/monitoring] under [WIS. STAT. §] 301.48(2)(3m) [sic] because it was after January 1, 2008.” Though counsel also explains that there is no arguable merit to seeking plea withdrawal because lifetime GPS tracking is simply a collateral effect, there is actually no arguable merit related to GPS tracking because the State was correct that Powell is not subject to the requirement at this time.

It appears that appellate counsel meant to cite WIS. STAT. § 301.48(2)(a)3m., which requires lifetime tracking of a person who “is convicted for committing a level 2 child sex offense and the department releases the person from prison upon the completion of the sentence imposed for the level 2 child sex offense.” However, while Powell was convicted of *second-degree* sexual assault, that crime is not a *level 2* offense under the GPS tracking statute.

WISCONSIN STAT. § 301.48(1) defines both level 1 and 2 child sex offenses. *See* WIS. STAT. § 301.48(1)(cm), (cn). The definitions closely match various first-degree sexual assault of a child charges found in WIS. STAT. § 948.02(1). A level 1 offense, *see* § 301.48(1)(cm), effectively encompasses violations of § 948.02(1)(am) and (b). A level 2 offense, *see* § 301.48(1)(cn), effectively encompasses violations of § 948.02(1)(c) and (d). Notably, both level 2 offenses include an element of the “use or threat of force or violence,” which is not an element of second-degree sexual assault of a child under WIS. STAT. § 948.02(2).

70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Thus, this court is satisfied that the no-merit report properly analyzes this issue as without arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of further representation of Powell 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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*Samuel A. Christensen*  
*Clerk of Court of Appeals*