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DISTRICT II

February 12, 2025

To:

Hon. Daniel J. Borowski
Circuit Court Judge
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Carl W. Chesshir
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Khamphout J.Y. Phonesaythip, #435908
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P.O. Box 800
Waupun, WI 53963

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

2023AP2008-CRNM	State of Wisconsin v. Khamphout J.Y. Phonesaythip (L.C. #2021CF116)
2023AP2009-CRNM	State of Wisconsin v. Khamphout J.Y. Phonesaythip (L.C. #2021CF117)
2023AP2010-CRNM	State of Wisconsin v. Khamphout J.Y. Phonesaythip (L.C. #2021CF155)

Before Neubauer, Grogan and Lazar, JJ.

In these consolidated cases, Khamphout J.Y. Phonesaythip appeals judgments of conviction for second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2) (2021-22)¹; delivery of between ten and fifty grams of methamphetamine, contrary to WIS. STAT. § 961.41(1)(e)3., with penalty enhancers for a second or subsequent offense (WIS. STAT. § 961.48(1)(a)) and for possession near a park (WIS. STAT. § 961.49(1m)(b)1.); and third-degree

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

sexual assault, contrary to WIS. STAT. § 940.225(3)(a). The maximum penalty for each of the offenses was also subject to the modifier for habitual criminality under WIS. STAT. § 939.62(1).

Appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Phonesaythip was advised of his right to respond to the no-merit report and has not responded. Upon consideration of the no-merit report, and following an independent review of the Record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgments. *See* WIS. STAT. RULE 809.21(1).

Phonesaythip was charged in Sheboygan County Circuit Court in four separate cases: 2021CF96, 2021CF116, 2021CF117, and 2021CF155. He waived a preliminary hearing in each case. The circuit court prioritized 2021CF116 for trial, which involved the second-degree sexual assault of a child charge. The remaining cases tagged along throughout the various status conferences and adjournments. As part of the trial preparations, the court ruled that the State could present other-acts evidence at the 2021CF116 trial, namely evidence of sexual conduct with his daughter that occurred in 2016 and the facts underlying the 2021CF155 charge for third-degree sexual assault.

Following the circuit court's evidentiary ruling, Phonesaythip reached a plea agreement that resolved all four pending cases. Phonesaythip agreed to plead no contest to the crimes of conviction. In exchange, the charges in 2021CF96, as well as the remaining charges in the other three cases, would be dismissed and read in at sentencing. The State agreed to recommend consecutive sentences no greater than the following: fifteen years' initial confinement and fifteen years' extended supervision for second-degree sexual assault of a child in 2021CF116;

five years' initial confinement and ten years' extended supervision for delivery of methamphetamine in 2021CF117; and five years' initial confinement and five years' extended supervision for third-degree sexual assault in 2021CF155. The State's recommendation included conditions for extended supervision, and the defense was free to argue at sentencing.

The circuit court conducted a thorough plea colloquy that included Phonesaythip's acknowledgment that the criminal complaints could be used to establish factual bases for his pleas. The court accepted Phonesaythip's no-contest pleas to each of those offenses, finding that the pleas were made knowingly, intelligently and voluntarily. It ordered a presentence investigation report (PSI) and set the matter for sentencing.

At sentencing, the prosecutor made the agreed-upon recommendation. The defense endorsed a sentence consistent with the low end of the PSI recommendation. The circuit court's sentencing remarks demonstrate it considered the nature of the offenses and protection of the public, as well as Phonesaythip's character, history, and rehabilitative potential. The court ultimately ordered consecutive sentences of twenty years' initial confinement and ten years' extended supervision for second-degree sexual assault of a child; eight years' initial confinement and ten years' extended supervision on the methamphetamine conviction; and five years' initial confinement and five years' extended supervision for third-degree sexual assault.

The no-merit report addresses whether Phonesaythip could raise nonfrivolous arguments concerning the validity of Phonesaythip's pleas, the sufficiency of the plea colloquy, the circuit court's exercise of sentencing discretion, and the court's exercise of discretion when determining the admissibility of the other-acts evidence. Our review of the appellate Record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge

based upon them would lack arguable merit. Our review of the appellate Record discloses no other potentially meritorious issues for appeal.

Based on the foregoing,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved from further representing Khamphout J.Y. Phonesaythip in these appeals. *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