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**DISTRICT IV**

March 6, 2025

To:

Hon. Todd J. Hepler  
Circuit Court Judge  
Electronic Notice

Julie Kayartz  
Clerk of Circuit Court  
Columbia County Courthouse  
Electronic Notice

Tristan Breedlove  
Electronic Notice

Abigail Potts  
Electronic Notice

Dustin M. Wangerin 583259  
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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2022AP1668-CRNM      State v. Dustin M. Wangerin (L.C. # 2018CF517)

Before Kloppenburg, P.J., Blanchard, and Taylor, 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 Jefren Olsen, appointed counsel for appellant Dustin Wangerin, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24).<sup>1</sup> Attorney Tristan Breedlove has been substituted as appointed appellate counsel. The no-merit report addresses whether there would be arguable merit to a challenge to Wangerin's plea or sentencing. Wangerin has filed a response to the no-merit report asserting that he believes that

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

he should have received a lesser sentence. After our review of the no-merit report and response, as well as our independent review of the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we agree with counsel that there are no issues of arguable merit. We summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

Wangerin was charged with first-degree reckless homicide and four counts of delivery of a controlled substance. Pursuant to a plea agreement, Wangerin pled guilty to first-degree reckless homicide and one count of delivery of a controlled substance. The remaining counts, as well as the charges in a separate case, were dismissed and read in for sentencing purposes. The State agreed to cap its sentencing recommendation on the reckless homicide conviction to eight years of initial confinement and twelve years of extended supervision. On the delivery charge, the parties jointly proposed that the circuit court defer entry of judgment in exchange for Wangerin's cooperation in the investigation and prosecution of a person who Wangerin asserted had been his heroin supplier. The court imposed seven years of initial confinement and thirteen years of extended supervision on the reckless homicide count, and approved the deferred entry of judgment on the delivery of a controlled substance count.<sup>2</sup>

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Wangerin's plea. We agree with counsel's assessment that a challenge to Wangerin's plea would be wholly frivolous. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716

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<sup>2</sup> On December 20, 2024, pursuant to the deferred entry of judgment agreement, the circuit court vacated Wangerin's plea to delivery of a controlled substance and dismissed that count with prejudice.

N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Wangerin signed, satisfied the court’s mandatory duties to personally address Wangerin and determine information such as Wangerin’s understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. We agree with counsel’s assessment that a claim of ineffective assistance of counsel in connection with the plea would be wholly frivolous. There is no indication of any other basis for plea withdrawal. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to Wangerin’s sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins “with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Wangerin’s rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Wangerin faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and

violate the judgment of reasonable people concerning what is right and proper under the circumstances” (citation omitted)). The court granted Wangerin 86 days of sentence credit, on counsel’s stipulation. We agree with counsel’s assessment that there would be no arguable merit to any challenge to the sentence imposed by the court and the sentence credit ordered.

Wangerin has filed a response asserting that he believes that his sentence was too harsh. Wangerin points to mitigating facts, including his positions that he maintained sobriety for the four years he was on a signature bond before he entered his plea and that he gave a statement to police describing his drug supplier’s role in this case. He also directs us to opinions expressed by the writer of the presentence investigation report (PSI) and in the defense alternative sentencing memorandum that Wangerin is a low risk to reoffend. However, all of those mitigating facts were before the circuit court at the time of sentencing. The court acknowledged Wangerin’s sobriety, positive behavior, and low risk to reoffend, but explained that the most significant factor to the court was the seriousness of the offense, which resulted in the loss of a life. Nothing before this court would support a non-frivolous argument that the circuit court erroneously exercised its discretion in determining Wangerin’s sentence. *See id.*

By prior order, this court questioned whether there would be arguable merit to a claim that Wangerin was denied his right to counsel at the restitution hearing. No-merit counsel has filed a response indicating that Wangerin does not want to pursue that issue, whether or not it would have arguable merit. Accordingly, we do not address it further.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of any further representation of Dustin Wangerin in this matter pursuant to 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*