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**WISCONSIN COURT OF APPEALS**

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 IV**

May 8, 2025

To:

Hon. John D. Hyland  
Circuit Court Judge  
Electronic Notice

John Blimling  
Electronic Notice

Jeff Okazaki  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

Kirk D. Henley  
Electronic Notice

Tracionna Dean  
1220 Post Road  
Fitchburg, WI 53713

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

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2024AP188-CRNM      State of Wisconsin v. Tracionna Dean (L.C. # 2020CF3125)

Before Kloppenburg, P.J., Graham, 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 Kirk Henley, as appointed counsel for Tracionna Dean, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Dean with a copy of the report, and both counsel and this court advised her of her right to file a response. Dean has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent review of the

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

record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

Dean was charged with substantial battery, misdemeanor battery, and disorderly conduct. Dean entered into a negotiated plea agreement with the State. Under the terms of the agreement, Dean pled guilty to substantial battery and the State agreed to dismiss the two other counts and refer the case to the Deferred Prosecution Program. Dean also agreed to pay restitution in the amount of \$2,333.77 as a condition of the deferred prosecution. The circuit court accepted Dean's guilty plea on the substantial battery count, dismissed the two other counts, and deferred entry of the judgment of conviction.

The deferred prosecution agreement was terminated after Dean was charged with a new offense in another case. Dean returned to the circuit court in this case for adjudication and sentencing. The court entered judgment on the substantial battery count. The court withheld sentence and placed Dean on probation for two years. The court further ruled that probation could be terminated early with full payment of restitution and approval of the probation agent. The court also found Dean eligible for expunction.

The no-merit report addresses whether Dean's plea was 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 charge, the rights Dean was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also addresses Dean's sentence. As explained in the no-merit report, the sentence is within the legal maximum. 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 a reasonable result. There is no arguable merit to this issue.

The no-merit report also discusses whether there would be arguable merit to a claim of ineffective assistance of trial counsel. To establish ineffective assistance of trial counsel, Dean would have to show that trial counsel's performance fell below an objective standard of reasonableness and that Dean was prejudiced as a result. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). In reviewing trial counsel's performance, "every effort is made to avoid determinations of ineffectiveness based on hindsight ... and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within professional norms." *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). This court's review of the record and the no-merit report discloses no basis for challenging trial counsel's performance. We agree with counsel's conclusion in the no-merit report that a claim of ineffective assistance of trial counsel would be without arguable merit.

Finally, the no-merit report addresses whether Dean could pursue an argument that the State breached the terms of the plea agreement when it resumed prosecution of the substantial battery charge. We agree with counsel that this issue is without arguable merit. The record establishes that Dean was made ineligible for the Deferred Prosecution Program due to a new charge in Dane County, based on events alleged to have occurred after Dean entered her guilty plea in this case. Dean was provided with another opportunity to enter into the Deferred Prosecution Program but failed to make contact with the program to schedule an intake

appointment. There is nothing in the no-merit report or in the record to support an arguably meritorious claim that the State breached the deferred prosecution agreement.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Kirk Henley is relieved of further representation of Tracionna Dean 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*