



OFFICE OF THE CLERK  
**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 III**

May 20, 2025

To:

Hon. Kelly J. Thimm  
Circuit Court Judge  
Electronic Notice

Michele Wick  
Clerk of Circuit Court  
Douglas County Courthouse  
Electronic Notice

Chad C. La Lor  
Electronic Notice

Lance M. Nelsen  
Electronic Notice

Lucas Swank  
Electronic Notice

John Anthony Hudacek  
5342 South Hudacek Road  
Superior, WI 54880

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

---

2024AP2418-CRNM      State of Wisconsin v. John Anthony Hudacek  
(L. C. No. 2022CM97)

Before Hruz, J.<sup>1</sup>

**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).**

John Anthony Hudacek appeals a judgment of conviction for one count of violating a harassment injunction and an order denying his motion for postconviction relief. Hudacek's appellate counsel, Lucas Swank, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Hudacek was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

appellate record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction and the order denying Hudacek's postconviction motion. *See* WIS. STAT. RULE 809.21.

The State charged Hudacek with one count of violating a harassment injunction and one count of harassment. The criminal complaint alleged that on April 5, 2022, a harassment injunction was in effect that required Hudacek to cease or avoid the harassment of Victim 1, to avoid Victim 1's residence, and to avoid contacting Victim 1. The complaint further alleged that on April 5, 2022, Hudacek drove his ATV down the road where Victim 1's residence is located, drove in a circle around Victim 1's dog, and then continued down the road before turning back and parking at the end of Victim 1's driveway. When Victim 1 went outside and told Hudacek to leave, Hudacek responded, "You don't own the road you fat bitch!" Hudacek refused to leave, despite Victim 1 asking him to do so multiple times. He eventually left, however, after telling Victim 1, "If I don't get ya God will get ya!"

In January 2023, Hudacek's trial attorney filed a motion for a competency examination. The circuit court granted that motion, and the court-appointed examiner opined that Hudacek was competent to stand trial. At a subsequent competency hearing, Hudacek asserted that he was competent, the State agreed, and the defense stipulated that the court could rely on the examiner's report to determine Hudacek's competency. The court then found Hudacek competent to proceed.

Hudacek's case proceeded to a jury trial in March 2023. Before trial, the State moved to dismiss the harassment charge, citing "evidentiary concerns" and asserting that the dismissal would be "in the interests of justice." The defense did not object to the State's motion. The

circuit court therefore granted the motion and entered a judgment of dismissal/acquittal on the harassment charge.

Prior to trial, the parties also entered into a stipulation regarding: (1) the existence of the harassment injunction in April 2022; (2) the conduct prohibited by the injunction; and (3) Hudacek's awareness in April 2022 that the injunction had been issued and was valid. Thereafter, at trial, the State presented testimony from Victim 1, from Victim 1's husband, and from a sheriff's deputy who responded to Victim 1's complaint. Following a colloquy with the circuit court, Hudacek elected to testify in his own defense. The jury subsequently found Hudacek guilty of violating a harassment injunction.

Following the jury's verdict, Hudacek chose to enter a no-contest plea to a misdemeanor bail jumping charge in a separate case, and the circuit court sentenced him on that charge. Hudacek then agreed to proceed directly to sentencing in the instant case. After the parties made their sentencing arguments and Hudacek declined to exercise his right of allocution, the court addressed the seriousness of the offense; the need to protect the public; Hudacek's character, including his many prior criminal convictions; and Hudacek's successful completion of his last period of extended supervision. The court then imposed and stayed a sentence of 9 months in jail, imposed a \$200 fine, and placed Hudacek on probation for a period of 2 years, with 30 days of conditional jail time. The court stated, "I believe I can do two years' probation because [Hudacek] was also convicted of another misdemeanor here today."

Hudacek filed a postconviction motion for sentence modification, asserting that his two-year term of probation exceeded the amount allowed by statute. *See* WIS. STAT. § 973.09(2)(a)1r. (stating that, "[e]xcept as provided in subd. 2.," the original term of probation

for an unclassified misdemeanor shall be “not more than one year”). Hudacek acknowledged that under § 973.09(2)(a)2., “[i]f the probationer is convicted of not less than 2 nor more than 4 misdemeanors at the same time, the maximum original term of probation may be increased by one year.” He argued, however, that while he was convicted of two misdemeanors on the same date, those convictions “did not occur ‘at the same time’ either in reality or for the purposes of the statute.”

In response to Hudacek’s postconviction motion, the State argued that regardless of Hudacek’s argument concerning WIS. STAT. § 973.09(2)(a)2., the two-year term of probation was permissible under § 973.09(2)(ar), which states that the term of probation “for a violation punishable under ... [WIS. STAT. §] 813.125(7)” shall be “not less than 6 months *or more than the period of the injunction issued under ... [§] 813.125.*” (Emphasis added.) The State noted that Hudacek had been convicted of violating a harassment injunction, contrary to § 813.125(7), and that the two-year term of probation did not exceed the period of the underlying injunction.

Hudacek’s attorney subsequently conceded that the two-year term of probation was permissible under WIS. STAT. § 973.09(2)(ar). The circuit court therefore denied Hudacek’s postconviction motion, and this no-merit appeal follows.

The no-merit report addresses: (1) whether the evidence was sufficient to sustain the jury’s verdict; and (2) whether the circuit court erroneously exercised its sentencing discretion or otherwise erred when sentencing Hudacek, including by imposing a two-year term of probation. We agree with counsel’s description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

The no-merit report does not address whether any issues of arguable merit exist regarding: (1) the circuit court's determination that Hudacek was competent to stand trial; (2) the court's pretrial ruling on the State's motion to admit Hudacek's statements; (3) jury selection; (4) the court's decision to hold Hudacek in contempt after his cell phone rang during trial; (5) the court's determination that if Hudacek chose to testify, the jury would be told that he had 15 prior criminal convictions; (6) the court's rulings on objections at trial; (7) Hudacek's waiver of his constitutional right not to testify; (8) the jury instructions; (9) the parties' opening statements and closing arguments; and (10) the effectiveness of Hudacek's trial attorney. Nevertheless, having independently reviewed the record, we are satisfied that none of these potential issues has arguable merit.

First, the circuit court properly found Hudacek competent to stand trial based on the court-appointed examiner's report. *See* WIS. STAT. § 971.14(4)(b).

Second, there is no arguable basis to claim that the circuit court erred by granting the State's motion to admit statements that Hudacek made to Victim 1, to Victim 1's husband, and to the sheriff's deputy. Hudacek did not object to the State's motion to admit those statements, and the court therefore granted the motion pursuant to Rule 409(3) of the 10th Judicial District Local Court Rules. We perceive no basis for Hudacek to have objected to the State's motion or for the court to have denied the motion on its merits.

Third, no errors occurred during jury selection. None of the potential jurors' answers during voir dire gave rise to an arguable basis to remove any potential juror for cause.

Fourth, the circuit court did not err by holding Hudacek in contempt and imposing a \$50 fine as a sanction after Hudacek's cell phone rang during trial. The court determined that

Hudacek had violated Rule 214(6) of the 10th Judicial District Local Court Rules, which provides that “[a]ll persons shall turn off or silence cell phones and all other electronic devices in [their] possession before entering any courtroom.” Based on that rule violation, the court could reasonably determine that Hudacek had committed contempt of court by engaging in intentional “[d]isobedience, resistance or obstruction of the authority, process or order of a court.” *See* WIS. STAT. § 785.01(1)(b). Accordingly, the court could properly impose a punitive sanction under the summary contempt procedure set forth in § 785.01(2). Furthermore, the court properly afforded Hudacek the opportunity for allocution before imposing the summary contempt sanction, *see Currie v. Schwalbach*, 139 Wis. 2d 544, 565, 407 N.W.2d 862 (1987), and the \$50 fine did not exceed the maximum sanction permitted by WIS. STAT. § 785.04(2)(b). Under these circumstances, any argument that the court erred by holding Hudacek in contempt and imposing a \$50 fine would lack arguable merit.

Fifth, the circuit court did not erroneously exercise its discretion by determining that, if Hudacek testified, the jury would be told that he had 15 prior criminal convictions. “For the purpose of attacking character for truthfulness, a witness may be asked whether the witness has ever been convicted of a crime or adjudicated delinquent and the number of such convictions or adjudications.” WIS. STAT. § 906.09(1). Initially, the State argued that the jury should be told that Hudacek had 18 prior convictions. At trial, however, the State conceded that two of those convictions were too remote in time and that one was not probative of Hudacek’s credibility. Hudacek, in turn, argued that the jury should be informed only of his most recent conviction. The circuit court considered each of the 15 convictions proffered by the State and concluded that, together, they were probative of Hudacek’s credibility because they showed a “pattern of criminal behavior.” The court further determined that the probative value of the 15 prior

convictions outweighed their prejudicial effect. *See* § 906.09(2). There would be no arguable merit to a claim that the court erroneously exercised its discretion in that regard.

Sixth, the circuit court's rulings on the parties' objections at trial do not provide an arguably meritorious basis for appeal. When Hudacek's attorney objected to an exhibit offered by the State based on a lack of foundation, the court directed the State to provide additional foundation. The State then did so, and Hudacek's attorney withdrew his objection to the exhibit. Later, the court overruled the State's relevancy objection to a question posed to Victim 1 on cross-examination. Subsequently, the court sustained a defense objection during Hudacek's cross-examination, concluding that the State's question was not relevant and "sound[ed] more like argument and not a question." These rulings, which were favorable to Hudacek, do not provide an arguably meritorious basis to challenge Hudacek's conviction.

Seventh, the circuit court conducted an appropriate colloquy with Hudacek regarding his waiver of his constitutional right not to testify. Eighth, the jury instructions accurately conveyed the applicable law and burden of proof. Ninth, nothing improper occurred during the parties' opening statements or closing arguments.<sup>2</sup> Tenth, our independent review of the record reveals no arguable basis to challenge the effectiveness of Hudacek's trial attorney.

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

---

<sup>2</sup> We note that the State objected during the defense's closing argument, asserting that particular facts referenced by Hudacek's attorney were "not in evidence." The circuit court implicitly overruled that objection, stating, "[T]his is argument and [the jury will] get an instruction." That ruling, which was favorable to Hudacek, does not give rise to an issue of arguable merit for appeal.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Lucas Swank is relieved of further representation of John Anthony Hudacek 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*