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**DISTRICT III**

September 6, 2023

To:

Hon. James A. Morrison  
Circuit Court Judge  
Electronic Notice

Jeremy Newman  
Electronic Notice

Sheila Dudka  
Clerk of Circuit Court  
Marinette County Courthouse  
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Kenneth Lee McClain 700555  
Dodge Correctional Inst.  
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Waupun, WI 53963-0700

Winn S. Collins  
Electronic Notice

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

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2022AP512-CRNM      State of Wisconsin v. Kenneth Lee McClain  
(L. C. No. 2020CF306)

Before Stark, P.J., Hruz and Gill, 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).**

Kenneth McClain appeals from a judgment convicting him of first-degree sexual assault of a child under the age of thirteen. Assistant State Public Defender Jeremy Newman has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).<sup>1</sup> The no-merit report addresses a withdrawal motion filed by trial counsel and the validity of McClain's plea and sentence. McClain was informed of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire

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

record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

Following disclosures made by a thirteen-year-old child about events that had occurred over a period of two years, the State charged McClain with two counts of first-degree sexual assault of a child under the age of twelve; two counts of sexual exploitation of a child by filming; using a computer to facilitate a child sex crime; causing a child under the age of thirteen to view sexual activity; bestiality; and possession of child pornography. The circuit court appointed Attorney Travis Crowell to represent McClain at county expense. Shortly thereafter, Crowell moved to withdraw, asserting a breakdown in communications with McClain.

At a status hearing, the circuit court asked McClain why he wanted Crowell to withdraw. McClain stated that Crowell was “trying to talk [him] into taking a 20-year plea” and that he “need[ed] to have some other eyes look at this.” After McClain acknowledged that he was able to discuss his case with Crowell and assist with his own defense, the court denied the withdrawal motion.

McClain eventually agreed to plead no contest to one amended count of first-degree sexual assault of a child under the age of thirteen (removing a twenty-five-year mandatory minimum term of initial confinement) in exchange for the dismissal of the remaining counts as read-in offenses and for the State’s agreement to make a joint sentencing recommendation of twenty years’ initial confinement followed by twenty years’ extended supervision. The circuit court accepted McClain’s plea after conducting a plea colloquy, reviewing McClain’s signed plea questionnaire, and ascertaining that there was a factual basis to support the plea.

The circuit court ordered a presentence investigation and subsequently held a sentencing hearing. After hearing from the parties, the court described the offense of conviction and read-in counts as “unimaginably evil” and McClain’s character as that of a “monster” who “pretends like he’s a good citizen.” The court then observed that it saw “no chance” that McClain could be rehabilitated, and it explained that its primary sentencing goals were to punish McClain for “reprehensible conduct beyond the worst order” and to ensure that McClain could not “ever hurt another little girl again.” The court concluded that McClain needed to “go to prison for every second that’s available,” and it sentenced McClain to the maximum available sentence of forty years’ initial confinement followed by forty years’ extended supervision.

Upon reviewing the record, we agree with counsel’s analysis and conclusion that McClain has no arguably meritorious basis to challenge his plea or sentence or the denial of his trial counsel’s withdrawal motion. We further note that (with some exceptions not relevant here) McClain’s pleas forfeited the right to raise other nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886. 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*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Assistant State Public Defender Jeremy Newman is relieved of any further representation of Kenneth McClain 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*