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**DISTRICT IV**

April 11, 2024

To:

Hon. Mark L. Goodman  
Circuit Court Judge  
Electronic Notice

Jennifer L. Vandermeuse  
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Laura Endres  
Clerk of Circuit Court  
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David J. Hamilton 545588  
Fox Lake Correctional Institution  
P.O. Box 147  
Fox Lake, WI 53933

Melissa M. Petersen  
Electronic Notice

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

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2022AP951-CRNM      State of Wisconsin v. David J. Hamilton (L.C. # 2017CF694)

Before Blanchard, 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 Melissa Peterson, as appointed counsel for David Hamilton, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Hamilton with a copy of the report, and he filed a response.<sup>2</sup> We

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

<sup>2</sup> The response was not signed, and we ordered Hamilton to provide a signature page by April 3, 2024. Hamilton then moved for an extension of that time by filing a signed motion. We accept that signature as sufficient to show his intent to sign the response.

conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

As part of a plea agreement with the State, Hamilton pled no contest to one count of sexual exploitation of a child, six counts of a registered sex offender intentionally photographing a minor without consent, five counts of exposing intimate parts, and forty-five counts of possession of child pornography. In exchange, the State amended certain charges in the information, including certain sexual exploitation charges that would have carried mandatory sentences of life imprisonment without the possibility of release. The circuit court accepted Hamilton's pleas and imposed consecutive sentences which, when later corrected by the court, totaled thirty-five years of initial confinement and twenty-four years of extended supervision.

The no-merit report addresses whether Hamilton's pleas were 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 Hamilton was waiving, and other matters. There is no merit to an argument that the colloquy was defective.

Hamilton filed a postconviction motion seeking to withdraw his pleas. The motion argued that his trial counsel was ineffective in several ways relating to counsel's discussion of the case with Hamilton. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient, and that it prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Here, the motion that Hamilton filed did not demonstrate that he was entitled to an evidentiary hearing because it did not adequately allege

prejudice. More specifically, the motion did not allege that Hamilton would have pled any differently if counsel had provided different information to Hamilton before he entered his pleas. See *State v. Bentley*, 201 Wis.2d 303, 313-14, 548 N.W.2d 50 (1996).

Despite that deficiency, the circuit court held an evidentiary hearing, and then denied the motion. It would be frivolous to argue that the court erroneously denied the motion because, at the hearing, Hamilton did not testify that he would have pled differently if counsel had provided different information.

Hamilton finally addresses this point in his response to the no-merit report. He asserts that, if counsel had properly explained the charges, process, and options to him, Hamilton would have pled no contest to “most of the charges” and gone to trial on those charges that Hamilton felt were lacking in evidence. More specifically, he states that he would have gone to trial on the sexual assault charge (which was dismissed and read in pursuant to the plea agreement) and on the exposing of genitals counts.

These belated assertions are too late to affect the outcome of this appeal from the circuit court decision, which was based on the record that was developed in that court. However, even if Hamilton had offered testimony about an alternate course of action in which he would have rejected the State’s plea offer, no reasonable fact finder would believe that testimony. This is because, had Hamilton pled no contest to the sexual exploitation charges in the form that those charges were in before the plea agreement, he would have been sentenced to mandatory life imprisonment without the possibility of release. Once Hamilton pled no contest to those unamended counts, there would be no point to having a trial on any other charges, because he would have already pled to crimes carrying mandatory life sentences without release..

Hamilton's assertion that he would have rejected the plea offer so that he could plead no contest to a life term for the purpose of obtaining a trial on other counts for which he felt the State lacked sufficient evidence is not reasonable or believable.

The no-merit report addresses Hamilton's sentences. The sentences are 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.

Hamilton's postconviction motion also argued that he was sentenced based on inaccurate information. More specifically, he argued that there were several errors in the presentence investigation report. However, the motion failed to argue a necessary part of the legal test, that the sentencing court actually relied on the allegedly inaccurate information. *See State v. Tiepelman*, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1. The record does not show any basis to make that argument. There is no arguable merit to this issue.

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

Therefore,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Petersen is relieved of further representation of Hamilton 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*