



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**

September 10, 2013

To:

Hon. Dee R. Dyer  
Circuit Court Judge  
Outagamie County Courthouse  
320 S. Walnut Street  
Appleton, WI 54911

Hon. Michael W. Gage  
Circuit Court Judge  
Outagamie County Courthouse  
320 S. Walnut Street  
Appleton, WI 54911

Lonnie Wolf  
Clerk of Circuit Court  
Outagamie County Courthouse  
320 S. Walnut Street  
Appleton, WI 54911

Angela Dawn Dirden  
P.O. Box 22424  
Green Bay, WI 54305

Carrie A. Schneider  
District Attorney  
320 S. Walnut St.  
Appleton, WI 54911

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Albert Taylor Jr. 346919  
Outagamie County Jail  
P.O. Box 1779  
Appleton, WI 54912-1779

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

---

2013AP603-CRNM	State of Wisconsin v. Albert Taylor, Jr.
2013AP604-CRNM	(L.C. ## 2011CF155, 2011CF365)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Albert Taylor, Jr., has filed a no-merit report concluding there is no arguable basis for Taylor to challenge his convictions and sentences for disorderly conduct, violating a domestic abuse temporary restraining order, and felony bail jumping. Taylor was advised of his right to respond to the report and has not responded. Upon our independent review of the record

as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

Pursuant to a plea agreement, Taylor entered no contest pleas to these charges in return for the dismissal of one count of strangulation and suffocation, one count of felony bail jumping, and one count of misdemeanor bail jumping. Those offenses were dismissed and read in for sentencing purposes. The State also agreed to concur with the sentence recommendation contained in the presentence investigation report (PSI). Judge Michael Gage accepted the no contest pleas and ordered a PSI.

On the day initially scheduled for sentencing, Judge Gage notified the parties that upon reading the PSI, he realized he was familiar with the mother of Taylor's children because she had provided care for Judge Gage's mother-in-law when she was in a nursing home. Judge Gage then recused himself from further participation in these cases. The cases were assigned to Judge Dee Dyer.

Before sentencing, Taylor indicated he wanted to withdraw his no contest pleas because he did not understand the dismissed and read-in charges and he wished to contest the strangulation charge. Taylor's counsel stated he believed the colloquy was not adequate and conceded he had not adequately explained the plea agreement to Taylor. Counsel also indicated that Taylor wished to substitute counsel. However, after a recess and further consultation with his attorney, Taylor decided to abandon his requests to withdraw the no contest pleas and substitute attorneys in favor of a continuance to allow time for preparation of an alternate PSI.

Upon completion of the alternate PSI, the State complied with the plea agreement and made the sentence recommendation from the initial PSI. Taylor disputed some of the facts

contained in the initial PSI. On the felony bail jumping count, the court imposed and stayed a sentence of thirty months' initial confinement and thirty months' extended supervision and placed Taylor on probation for four years. On the two misdemeanor charges, the court withheld sentence and placed Taylor on probation with conditions of probation that required him to serve one-year jail time.

The no-merit report addresses whether there is any basis for Taylor to withdraw his no contest pleas. The report focuses on misunderstanding of the plea agreement regarding dismissal of the strangulation charge. Because Taylor was aware of that potential defect and decided to abandon his request to withdraw his no contest pleas, Taylor waived his right to challenge that defect. *See State v. Damaske*, 212 Wis. 2d 169, 190-91, 567 N.W.2d 905 (Ct. App. 1997).

The plea colloquy also omitted a recitation of the maximum sentences and failed to warn Taylor that the court was not bound by the parties' sentence recommendations. However, these facts were included in the plea questionnaire and waiver of rights forms, and the no-merit report indicates Taylor does not allege any lack of understanding of any of the areas of inquiry relevant to the entry of his pleas. Taylor did not contradict his counsel's assertion. Because any postconviction relief would be contingent on Taylor's allegation that he lacked understanding of some matter relevant to the entry of his pleas, *see State v. Brown*, 2006 WI 100, ¶¶2, 36, 293 Wis. 2d 594, 716 N.W.2d 906, a motion to withdraw the pleas on that basis would lack arguable merit.

The no-merit report also addresses whether Taylor was prejudiced by Judge Gage's participation in these proceedings. Because Judge Gage recused himself when he became aware of his familiarity with the mother of Taylor's daughters, Taylor was not prejudiced by Judge

Gage's participation in the case. Taylor was aware of Judge Gage's recusal at the time he withdrew his request to withdraw the no contest pleas. Therefore, that issue was waived. *See Damaske*, 212 Wis. 2d at 191.

Finally, the record discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed consecutive sentences totaling seven years' imprisonment in addition to substantial fines. The court appropriately considered the seriousness of the offenses, Taylor's character including his prior record, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors and the imposition of probation with one year in jail as a condition is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21. (2011-12).

IT IS FURTHER ORDERED that attorney Angela Dirden is relieved of her obligation to further represent Taylor in these matters. WIS. STAT. RULE 809.32(3). (2011-12).

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*