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**WISCONSIN COURT OF APPEALS**

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**DISTRICT II**

October 30, 2013

To:

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Circuit Court Judge  
Racine County Courthouse  
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Racine, WI 53403

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Clerk of Circuit Court  
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Michael A. Lane  
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You are hereby notified that the Court has entered the following opinion and order:

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2012AP2433-CRNM      State of Wisconsin v. Michael A. Lane (L.C. #2009CF895)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Michael A. Lane appeals from a judgment convicting him of possession with intent to deliver cocaine (between one and five grams) and possession of drug paraphernalia. Lane's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Lane received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.<sup>2</sup> See RULE 809.21.

The charges against Lane arose from a police raid of a known drug house where he was residing with several other people. Police found knotted plastic baggies of cocaine in Lane's pants pocket. They also found a digital scale, a crack pipe, and empty plastic baggies. Lane told police that the cocaine was not his but that he was holding it for someone else.

The no-merit report addresses the following appellate issues: (1) whether the evidence at Lane's jury trial was sufficient to support his convictions; (2) whether the circuit court properly exercised its discretion at sentencing; and (3) whether trial counsel's decision not to play an audio recording of the statement Lane gave to police was a valid trial strategy.

With respect to the sufficiency of the evidence, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the State and the convictions, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Lane of his crimes. Accordingly, we agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76,

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<sup>2</sup> There appears to be a clerical error in the judgment regarding whether Lane was convicted of possession with intent to deliver cocaine (between one and five grams) *at or near a school*. Although Lane was charged with this penalty enhancer, the circuit court dismissed it at the close of the State's case at trial. We remand the matter to the circuit court so that the judgment can be amended.

270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing an aggregate sentence of five years of imprisonment, the court considered the seriousness of the offenses, Lane's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Lane's prior record, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Lane's sentence would lack arguable merit.

Finally, with respect to trial counsel's decision not to play an audio recording of the statement Lane gave to police, the record demonstrates that it was a valid trial strategy. Lane had filed a motion for postconviction relief, arguing, in part, that trial counsel was ineffective for failing to play the recording at trial. The circuit court held a hearing on the motion at which trial counsel testified. At the conclusion of the hearing, the court determined that trial counsel was not ineffective because he had a valid strategic reason for not playing the recording. The record supports this conclusion. Accordingly, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

In addition to the issues raised in the no-merit report, we considered other potential issues that arise in cases tried to a jury, *e.g.*, objections during trial, confirmation that the defendant's election to testify is knowingly made, use of proper jury instructions, etc. Here, objections during Lane's trial were few in number and properly ruled on. When Lane elected to testify at trial, the circuit court conducted a proper colloquy with him about his right not to testify. The jury instructions accurately conveyed the applicable law and burden of proof. Accordingly, we conclude that such issues would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.<sup>3</sup> Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Ralph J. Sczygelski of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Ralph J. Sczygelski is relieved of further representation of Lane in this matter.

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

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<sup>3</sup> There were a couple of constitutional issues that could have been discussed in the no-merit report. For example, Lane raised a *Batson* challenge during jury selection. See *Batson v. Kentucky*, 476 U.S. 79 (1986). He also challenged the admissibility of his statement to police, which resulted in a *Miranda/Goodchild* hearing. See *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965). In both instances, we are satisfied that the circuit court applied the correct legal standards and made proper rulings. Accordingly, we conclude that such issues would lack arguable merit.