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**DISTRICT I**

January 14, 2014

To:

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

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2013AP2037-CRNM      State of Wisconsin v. Victor J. Fowler (L.C. #2012CF4898)

Before Curley, P.J., Fine and Brennan, JJ.

Victor J. Fowler appeals a judgment convicting him of physical abuse of a child, reckless causation of bodily harm. Attorney Colleen Marion filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Fowler was advised that he had a right to respond, but he did not do so. After considering the no-merit report and conducting an independent review of the record, we

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

conclude that there are no issues of arguable merit that Fowler could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.<sup>2</sup>

The no-merit report first addresses whether Fowler's no-contest plea was knowingly, intelligently, and voluntarily entered. *See* WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The plea agreement was stated on the record and both Fowler and his lawyer informed the circuit court that they agreed with the State's recitation of the agreement. The circuit court informed Fowler that it was not bound by the plea agreement and could impose the maximum sentence. The circuit court also informed Fowler of the potential maximum penalties he faced. Fowler told the court he understood. The circuit court explained to Fowler that even though he was pleading no contest, it would find him guilty, and he said he understood.

The circuit court asked Fowler whether he knew the constitutional rights he was waiving by entering the plea, which were listed on the plea questionnaire and waiver-of-rights form that Fowler had signed, and Fowler informed the circuit court that he did. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court summarized some of the constitutional rights Fowler was waiving on the record, and Fowler again acknowledged that he understood. The circuit court asked Fowler whether he had gone over the constitutional rights listed on the plea waiver form with his attorney and understood them, and Fowler said that he did.

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<sup>2</sup> Fowler filed a postconviction motion to vacate the DNA surcharge. The circuit court granted the motion. Fowler does not appeal that order.

The circuit court then addressed with Fowler what the elements of the charge were, and Fowler acknowledged that he understood. The circuit court informed Fowler that he could be deported after conviction if he was not a U.S. citizen. Fowler told the circuit court he understood. Fowler agreed that the circuit court could use the facts alleged in the complaint as a factual basis for the plea. Based on the circuit court's thorough and extensive colloquy with Fowler, we conclude that there would be no arguable merit to an appellate argument that the plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Fowler in accord with the terms of the plea agreement to twelve months in jail, imposed and stayed, with two years of probation and fifteen days condition time, imposed and stayed. The circuit court discussed all of the efforts and positive progress that Fowler had been making to address his own history of being abused as a child and how that led to his anger issues and alcohol and drug abuse as an adult. The circuit court considered Fowler's criminal history and the strong letters of support it had received from the people working with Fowler on his treatment needs. The circuit court explained its application of all of the various sentencing considerations in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to a challenge to the sentence on appeal.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment, and relieve Attorney Colleen Marion of further representation of Fowler.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Colleen Marion is relieved of any further representation of Fowler in this matter. *See* WIS. STAT. RULE 809.32(3).

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