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**DISTRICT I**

March 20, 2014

To:

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

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2013AP2225-CRNM	State of Wisconsin v. Kevin Talley (L.C. # 2012CF2124)
2013AP2226-CRNM	State of Wisconsin v. Kevin Talley (L.C. # 2012CF3330)

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

In these consolidated appeals, Kevin Talley appeals from judgments entered after he pled guilty to substantial battery with intent to cause bodily harm, domestic abuse, contrary to WIS. STAT. §§ 940.19(2) and 968.075(1)(a), in Milwaukee County Case No. 12CF2124, and to felony intimidation of a witness, domestic abuse, contrary to WIS. STAT. §§ 940.43(7) and 968.075(1)(a), in Milwaukee County Case No. 12CF3330. Talley's postconviction and appellate lawyer, Cheryl A. Ward, Esq., has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Talley did not respond. After independently

reviewing the Records and the no-merit report, we conclude there are no issues of arguable merit that could be raised on appeal and summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

**Case No. 12CF2124**

Talley was charged with substantial battery, domestic abuse, as a repeater and strangulation/suffocation, domestic abuse, as a repeater arising out of events that occurred in April 2012. According to the complaint, the victim told police that Talley entered her residence at 3:00 a.m. He was intoxicated, became jealous, and started to threaten her. When she told him to leave, Talley became more agitated. The victim relayed that Talley put both of his hands around her neck and applied pressure, making it difficult for her to breathe. The victim freed herself from Talley at which point, he laid in the bed as if nothing had happened. The victim's and Talley's three-year-old child witnessed the events. When the victim left the bedroom, took her child, and began gathering the child's things, Talley punched the victim in the head. She suffered a laceration that required several stitches to close. The complaint further alleged that Talley was on extended supervision for the felony offense of possession of cocaine, second or subsequent offense, at the time of the incident.

**Case No. 12CF3330**

Less than three months after being charged in Case No. 12CF2124, Talley was charged in this case with three counts of felony intimidation of a witness, domestic abuse. According to the complaint, routine screening of the inmate phone system revealed that Talley had contacted the victim on three separate occasions in an attempt to dissuade her from attending court proceedings.

In her no-merit report, counsel addresses whether there would be any arguable merit to an appeal on two issues: (1) the validity of Talley's pleas; and (2) the circuit court's exercise of sentencing discretion. For reasons explained below, we agree with the conclusion that there would be no arguable merit to pursuing these issues on appeal.

### *Pleas*

After plea bargaining, Talley agreed to plead guilty to substantial battery, domestic abuse, in Case No. 12CF2124. The State, in exchange, agreed to ask the circuit court to dismiss and read-in the repeater enhancer on that charge and the additional charge of strangulation/suffocation, domestic abuse, as a repeater.

In Case No. 12CF3330, Talley agreed to plead guilty to felony intimidation of a witness, domestic abuse. The State, in exchange, agreed to ask the circuit court to dismiss and read-in the two additional counts of felony intimidation of a witness, domestic abuse. Additionally, the State would be free to argue as to the length of Talley's sentences; however, it would not take a position on whether the sentences should be ordered consecutive or concurrent to a potential revocation sentence he was facing.

At the hearing, Talley confirmed this was his understanding of the plea negotiations. He entered his guilty pleas, which the circuit court accepted.

To be valid, a guilty plea must be knowing, intelligent, and voluntary. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12, 20 (1986). Talley completed plea questionnaires and waiver of rights forms and addendums in both cases. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827–28, 416 N.W.2d 627, 629–630 (Ct. App. 1987). The

elements of the crimes he pled guilty to were set forth on separate pages attached to the forms. The court explained the maximum penalties Talley faced. The forms, along with the addendums, further specified the constitutional rights that Talley was waiving with his pleas. *See Bangert*, 131 Wis. 2d at 270–272, 389 N.W.2d at 24–25. Additionally, the circuit court conducted a plea colloquy, as required by WIS. STAT. § 971.08, *Bangert*, and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 399, 683 N.W.2d 14, 24. There would be no arguable merit to challenging the validity of Talley’s guilty pleas.

### *Sentencing*

The next issue the no-merit report discusses is the circuit court’s exercise of sentencing discretion. We agree that there would be no arguable basis to assert that the circuit court erroneously exercised its sentencing discretion, *see State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975).

At sentencing, the circuit court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 606, 712 N.W.2d 76, 82, and it must determine which objective or objectives are of greatest importance, *Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d at 557–558, 678 N.W.2d at 207. In seeking to fulfill the sentencing objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 851, 720 N.W.2d

695, 699. The weight to be given to each factor is committed to the circuit court's discretion. *Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d at 557–558, 678 N.W.2d at 207.

In this case, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. The circuit court began by carefully considering whether probation was a viable option for Talley. It stressed to Talley the impact of domestic violence on Talley's three-year-old daughter and expressed concerns related to Talley's history of alcohol and drug use.

The circuit court also commented on Talley's history in the criminal justice system, spanning back to when Talley was thirteen years old. On the charge of intimidation of a witness, the circuit court noted that this reflected poorly on Talley's character and showed that he was not taking responsibility for his actions. The circuit court pointed out that this was a crime against the community insofar as Talley sought to prevent the truth from coming out.

Ultimately, the circuit court concluded that probation would unduly depreciate the seriousness of what had happened and that confinement time was necessary to protect the community and to punish Talley. The circuit court's comments demonstrate a proper exercise of discretion.

In Case No. 12CF2124, on the charge of substantial battery, domestic abuse, the circuit court sentenced Talley to one year and six months of initial confinement and two years of extended supervision. Although this was the maximum sentence available, the circuit court's reasons for imposing it were sound. In Case No. 12CF3330, on the charge of felony intimidation of a witness, domestic abuse, the circuit court sentenced Talley to four years and six months of initial confinement and three years of extended supervision. This was within the limits of the

maximum sentence available. The sentences were ordered to run consecutively to one another and to the revocation sentence Talley was serving at the time. There would be no arguable merit to a challenge to the circuit court's sentencing discretion and the severity of the sentences.

Our independent review of the Records reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Cheryl A. Ward, Esq., is relieved of further representation of Talley in these matters. *See* WIS. STAT. RULE 809.32(3).

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