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

DISTRICT II

July 16, 2014

To:

Hon. Mary Kay Wagner
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Kaitlin A. Lamb
Assistant State Public Defender
735 N. Water Street, Suite 912
Milwaukee, WI 53202

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

Robert D. Zapf
District Attorney
Molinaro Bldg.
912 56th Street
Kenosha, WI 53140-3747

John M. Norris
6619 29th Avenue
Kenosha, WI 53143

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

2014AP274-CRNM State of Wisconsin v. John M. Norris (L.C. #2011CF1167)

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

John M. Norris appeals from a judgment of conviction for aggravated battery of a physically disabled person as domestic abuse and as a repeat offender. He also appeals from an order denying his postconviction motion for resentencing. Norris's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Norris received a copy of the report, was advised of his right to file a response,

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Norris was charged with aggravated battery, disorderly conduct, and false imprisonment as a result of an occurrence at his residence with his live-in girlfriend. He entered a no-contest plea to the aggravated battery charge and the remaining two were dismissed. In accord with the plea agreement, the prosecution recommended probation. Norris was sentenced to two years' initial confinement and three years' extended supervision. A postconviction motion for resentencing argued that at sentencing the court had not provided a sufficient explanation for how the need to protect the public related to the sentence. The circuit court denied the motion explaining how the rejection of probation gave consideration of the need to protect the public.

The no-merit report addresses the potential issues of whether Norris's plea was freely, voluntarily and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion, including whether it was a proper exercise of discretion to require Norris to pay the DNA surcharge and whether the denial of the postconviction motion was proper. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. Although the circuit court did not ask Norris during the plea colloquy to admit or confirm his prior convictions that formed the basis for the repeater allegation, they were set forth in the presentence investigation report and not challenged. The recitation in the presentence investigation report was adequate proof. *See* ***State v. Goldstein***, 182 Wis. 2d 251, 257-58, 513 N.W.2d 631 (Ct. App. 1994). Further, we cannot conclude that the five-year sentence when measured against the maximum eight-year sentence is so excessive or unusual so as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d

457 (1975). We also observe that the amount of sentence credit was properly determined, that Norris agreed to the number of days credited, and the judgment of conviction reflects the correct number of days of sentence credit.

Any other possible appellate issues are waived because the no-contest plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights.[2] ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and order, and discharges appellate counsel of the obligation to represent Norris further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Kaitlin A. Lamb is relieved from further representing John M. Norris in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] The record reflects that Norris repeatedly asserted his innocence and claims that the police and his attorneys had not adequately investigated the case or obtained evidence from his cell phone that would have supported his version of the occurrence. A record was made that counsel had reviewed the evidence Norris thought would be helpful and counsel concluded it would not be relevant. Moreover, the circuit court went to great lengths to ascertain that Norris wanted to enter his no contest plea despite his claims. Norris waived defenses to the charge.