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**DISTRICT I**

November 6, 2014

To:

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

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2014AP652-CRNM	State of Wisconsin v. William I. Payne (L.C. # 2013CF637)
2014AP653-CRNM	State of Wisconsin v. William I. Payne (L.C. # 2013CF1729)

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

In these consolidated appeals, William I. Payne appeals from judgments entered after he pled guilty to aggravated battery with intent to cause bodily harm, contrary to WIS. STAT. § 940.19(4), in Milwaukee County Case No. 13CF637, and to misdemeanor intimidation of a witness, domestic abuse, contrary to WIS. STAT. §§ 940.42 and 968.075(1)(a), in Milwaukee County Case No. 13CF1729. Payne's postconviction and appellate lawyer, Assistant State Public Defender Dustin C. Haskell, Esq., has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Payne 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. 13CF637**

Payne was charged with aggravated battery, as a repeater, and second-degree reckless injury, as a repeater, arising out of events that occurred in January 2013. According to the complaint, police were dispatched to a home to investigate a battery complaint. Upon arrival, an officer found the victim with blood all over her face and a bandage around her head and right eye. The victim was going in and out of consciousness due to her blood loss. Payne's mother, who witnessed the events, told the officer that Payne hit the victim in the eye with a glass candleholder. The victim's six-year-old daughter told the officer that she saw her mother and her mother's boyfriend, Payne, get into a fight over her mother's cell phone and that during the argument, Payne hit her mother with a "lamp."

The victim was treated for her injuries, which included a bilateral nasal fracture and a globe rupture of her right eye. Because of the globe rupture, the victim suffered a permanent loss of sight.

The complaint also included information substantiating that Payne had been convicted of at least one felony offense in the five-year period preceding the current charges.

**Case No. 13CF1729**

Two months after being charged in Case No. 13CF637, Payne was charged in this case with one count of felony intimidation of a witness, as a repeater. According to the complaint,

screening of the inmate phone system revealed that Payne had contacted the victim in an attempt to dissuade her from attending court proceedings.

Again, the complaint included information substantiating that Payne had been convicted of at least one felony offense in the five-year period preceding the current charges.

In his no-merit report, counsel addresses whether there would be any arguable merit to an appeal on two issues: (1) the validity of Payne'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, Payne agreed to plead guilty to aggravated battery in Case No. 13CF637. In exchange, the State moved to strike the repeater enhancer for that charge and sought to dismiss outright the charge of second-degree reckless injury, as a repeater. Additionally, in exchange for Payne's guilty plea, the State moved to amend the charge of felony witness intimidation to misdemeanor witness intimidation in Case No. 13CF1729. The State moved to strike the repeater enhancer in that case as well.

The State further agreed to make the following global sentencing recommendation: three years of initial confinement and three years of extended supervision, consecutive to any other sentence Payne was serving. The State detailed the various conditions it would recommend for Payne's extended supervision, and it further advised that it would be requesting that the circuit court impose the domestic violence surcharge and the crime victim and witness assistance surcharge.

At the combined plea hearing, Payne 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). Payne 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 Payne faced and the constitutional rights he was waiving with his pleas. See *Bangert*, 131 Wis. 2d at 270–272, 389 N.W.2d at 24–25. 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 Payne’s guilty pleas.<sup>1</sup>

### *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

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<sup>1</sup> We note that there are no references to domestic abuse or the domestic abuse surcharge in the complaint or information in Case No. 13CF637. See WIS. STAT. §§ 968.075(1)(a) & 973.055(1). Additionally, there are no statutory references to domestic abuse in either of the plea questionnaires in the underlying cases. As noted, however, the State advised during the plea proceedings that it would be requesting that the circuit court impose the surcharge. Additionally, during the plea colloquies relative to both cases, the circuit court explained that the penalties upon conviction included that Payne would be responsible for the domestic abuse assessment, and Payne confirmed that he understood.

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 pointing out the aggravated nature of the crime, emphasizing that the victim would never be the same. Additionally, the circuit court noted that the victim’s daughter, as a witness to the incident, would also probably never be the same. The circuit court further considered the intimidation that was going on while the case was pending, and it took into account Payne’s criminal history, which dated back to when he was a juvenile and included a revocation as a result of the underlying offenses.

Ultimately, the circuit court concluded that probation would unduly depreciate the seriousness of what had happened and found that the State’s recommendation was “absolutely

appropriate.” Although Payne’s trial lawyer had asked for a concurrent sentence, the circuit court explained that it was not “appropriate given how aggravated this case was, and the fact that you were on supervision when this occurred and the impact on the victim.” The circuit court’s comments demonstrate a proper exercise of discretion.

On the count of aggravated battery, the circuit court sentenced Payne to three years of initial confinement and three years of extended supervision, consecutive to any other sentence Payne was serving. Although this was the maximum sentence available, it was not excessive given the surrounding circumstances. On the count of misdemeanor intimidation of a witness, the circuit court sentenced Payne to nine months in the House of Corrections, concurrent to his sentence for aggravated battery. In both cases, the circuit court imposed the domestic violence surcharge and the crime victim and witness assistance surcharge. There would be no arguable merit to a challenge to the circuit court’s sentencing discretion and the severity of the sentences.<sup>2</sup>

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.

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<sup>2</sup> Following a motion, the circuit court vacated the \$250 DNA surcharge it had imposed.

IT IS FURTHER ORDERED that Dustin C. Haskell, Esq., is relieved of further representation of Payne in these matters. *See* WIS. STAT. RULE 809.32(3).

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