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**DISTRICT II**

January 7, 2015

To:

Hon. Robert J. Wirtz  
Circuit Court Judge  
Fond du Lac County Courthouse  
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Fond du Lac, WI 54935

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Clerk of Circuit Court  
Fond du Lac County Courthouse  
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Matthew C. Oswald  
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Brownsville, WI 53006

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

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2014AP2336-CRNM      State of Wisconsin v. Matthew C. Oswald (L.C. #2013CF534)

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

Matthew C. Oswald appeals from a judgment convicting him of burglary of a building or dwelling as a party to a crime. Oswald'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). Oswald 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 counsel's report, we conclude that there are no issues with

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

arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Oswald's no contest plea was knowingly, voluntarily, and intelligently entered and (2) whether the circuit court properly exercised its discretion at sentencing.

With respect to the entry of Oswald's no contest plea, the record shows that the circuit court engaged in a colloquy with Oswald that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. The court referred to that form when discussing the rights Oswald was giving up by entering his plea. This was permissible under *State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that any challenge to the entry of Oswald's no contest plea would lack arguable merit.

With respect to sentencing, the circuit court imposed three years of probation with one year of conditional jail time. In making this decision, the court considered the seriousness of the offense, Oswald's character, and the need to protect the public. See *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 Oswald's prior record, the court's decision 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 the circuit court's decision at sentencing would lack arguable merit.<sup>2</sup>

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 Timothy T. O'Connell 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.

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved of further representation of Oswald in this matter.

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

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<sup>2</sup> Oswald would not be able to challenge the circuit court's imposition of three years of probation, as that was consistent with the parties' joint recommendation. See *State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (defendants may not attack their sentence on appeal when the circuit court imposes the sentence requested by them).

<sup>3</sup> Before entering his plea, Oswald filed a motion for the circuit court judge to recuse himself. The motion was premised on the mistaken belief that the judge was brothers with Oswald's former employer and was related to the girlfriend of Oswald's brother. The judge denied the motion after explaining that Oswald was mistaken. Upon review of the ruling, we are satisfied that it does not present a potentially meritorious issue for appeal. In any event, Oswald forfeited the right to pursue the issue when he entered his plea. See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (a plea forfeits all nonjurisdictional defects, including constitutional claims).