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

June 17, 2015

To:

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

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

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

George S. Pappas Jr.
1345 W. Mason St., Ste. 200
Green Bay, WI 54303-2072

Kevin L. Jones
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2015AP515-CRNM State of Wisconsin v. Kevin L. Jones (L.C. #2012CF199)
2015AP516-CRNM State of Wisconsin v. Kevin L. Jones (L.C. #2012CF201)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

In these consolidated cases, Kevin L. Jones appeals from judgments of conviction and an order denying a motion to modify sentence. Jones' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Jones 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

[1] All references to the Wisconsin Statutes are to the 2013-14 version.

issues with arguable merit for appeal. Therefore, we summarily affirm the judgments and order. WIS. STAT. RULE 809.21.

In April 2012, the State filed a complaint against Jones in Fond du Lac county case No. 2012CF201 for strangulation and suffocation, misdemeanor battery, and resisting an officer. The charges stemmed from Jones' attack on his girlfriend and refusal to cooperate with police when they attempted to restrain him. Jones was released on bail with the condition of no contact with the victim.

In May 2012, the State filed another complaint against Jones in Fond du Lac county case No. 2012CF199 for substantial battery, disorderly conduct, felony bail jumping, and misdemeanor bail jumping. The charges stemmed from another attack by Jones on the victim. According to the complaint, police responded to a call from the victim, who was found bleeding very badly at her residence.[2] Police learned from a witness that Jones was with the victim earlier that night despite the condition of no contact. They subsequently located, stopped, and arrested Jones, who still had blood on his hands from the attack. Police took pictures of Jones' hands during the booking process.

After unsuccessfully litigating several motions to suppress, Jones entered no contest pleas to all but one of the charges.[3] The circuit court imposed the following sentences, which were ordered to run consecutively: (1) two years of initial confinement and three years of extended

[2] The victim had been hit in the face with a beer glass and needed over thirty stiches to treat. Based on the amount of blood at the scene, the responding officer initially thought that a homicide had occurred.

[3] The charge of misdemeanor bail jumping was dismissed and read in.

supervision on the strangulation and suffocation, (2) nine months of jail on the misdemeanor battery, (3) nine months of jail on the resisting an officer, (4) one and one-half years of initial confinement and two years of extended supervision on the substantial battery, (5) ninety days of jail on the disorderly conduct, and (6) one and one-half years of initial confinement and three years of extended supervision on the felony bail jumping.

Jones filed a motion to modify sentence. Following a hearing on the matter, the circuit court denied the motion. This no-merit appeal follows.

The no-merit report first addresses whether Jones' no contest pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Jones 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. That form, which the court referred to during the colloquy, is competent evidence of a valid plea. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that any challenge to the entry of Jones' no contest pleas would lack arguable merit.[4]

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the circuit court's decision had a "rational and

[4] There is a discrepancy in the record as to Jones' ability to read and write. At the plea hearing, Jones indicated to the circuit court that he could read and write. However, at sentencing, trial counsel disputed that. Despite this discrepancy, we are satisfied that Jones' pleas were knowingly, voluntarily, and intelligently entered. We base this conclusion on the plea colloquy as a whole, the plea questionnaire and waiver of rights form, Jones' experience in the criminal justice system as a repeat offender, and the fact that sentencing took place several months after the plea hearing, thus allowing Jones ample time to pursue plea withdrawal if warranted.

explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning its sentences, the court considered the seriousness of the offenses, Jones' character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the cases, which were aggravated by Jones' lengthy criminal record and demonstrated recidivism towards the victim, the sentences do 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). Accordingly, we agree with counsel that any challenge to the circuit court's decision at sentencing would lack arguable merit.

The no-merit report fails to discuss whether there would be arguable merit to a challenge to the circuit court's denial of Jones' motions to suppress. *See* WIS. STAT. § 971.31(10) (plea does not preclude appellate review of the denial of a motion to suppress). Likewise, it fails to discuss whether the circuit court properly denied Jones' motion to modify sentence. Counsel was obligated to address these possible appellate issues arising from the record and state why they do not have arguable merit. Future no-merit reports may be rejected if they do not fulfill the purpose of WIS. STAT. RULE 809.32.

We have independently reviewed the record relating to Jones' motions to suppress. Jones challenged his stop and arrest after the second attack and moved to suppress the pictures of his bloody hands. The circuit court determined that, at the very least, the police were within their rights to stop and arrest Jones for violating the bail condition of no contact with the victim. The court further determined that there was nothing unlawful with regard to the pictures of Jones' hands, as they were not intrusive and simply served to preserve evidence. The record supports these determinations and no issue with arguable merit arises.

We have also independently reviewed the record relating to Jones' motion to modify sentence. Jones argued that his sentences were excessive and that he needed to be out with his family to care for his ailing mother. The circuit court rejected the claim of excessiveness, reiterating the aggravated circumstances of the cases and Jones' risk to reoffend. It also concluded that Jones had failed to demonstrate the existence of new factors warranting sentence modification. Again, the record supports these determinations and no issue with arguable merit arises.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.[5] 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 George S. Pappas, Jr., of further representation in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney George S. Pappas, Jr., is relieved of further representation of Jones in these matters.

Diane M. Fremgen
Clerk of Court of Appeals

[5] After the plea hearing, trial counsel moved to withdraw from the case based on a discovered conflict of interest. The circuit court granted the motion over Jones' objection. The court explained to Jones that he had the right to conflict-free representation and that such representation was necessary "so that we aren't doing this more than once." The court then ordered the state public defender to appoint new counsel, and new counsel appeared with Jones at sentencing. Reviewing the circuit court's actions, we are satisfied that no issue with arguable merit arises.