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**DISTRICT II**

July 29, 2015

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

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2015AP267-CRNM      State of Wisconsin v. Desmond M. Stalsberg (L.C. #2013CF69)

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

Desmond M. Stalsberg appeals a judgment convicting him of felon in possession of a firearm and misdemeanor battery, domestic abuse, both as a repeater. Stalsberg's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Despite being granted an extension of time, Stalsberg has not filed a response. Upon consideration of the report and our independent review

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

of the record, we conclude there is no arguable merit to any potential appellate issue and that the judgment may be summarily affirmed. *See* WIS. STAT. RULE 809.21. We accept the no-merit report and relieve Attorney Kaitlin A. Lamb of further representing Stalsberg in this matter.

While in a car driven by his girlfriend, Stalsberg grew angry because an old boyfriend had “liked” a picture of her on Facebook. Stalsberg repeatedly hit her in the face with a closed fist and aimed a gun at her. Saying she was “all [he] ha[d]” and he had “nothing to live for,” he then put the gun in his mouth. She ordered him out of the car. He said he “c[ould]n’t take it anymore” and aimed the gun at his head. The gun “slipped” and he shot himself in the wrist.

Stalsberg entered no-contest pleas to one count each of felon in possession of a firearm and misdemeanor battery, domestic abuse, both as a repeater. Two other counts, second-degree recklessly endangering safety and false imprisonment, both with the domestic abuse assessment and as repeater, were dismissed outright. Before Stalsberg was sentenced, the girlfriend recanted her statements to police, claiming she had made them out of anger because he was living with another woman. The court imposed a three-year prison sentence: two years’ initial confinement and one year extended supervision to be served consecutive to a Racine county case. He also was ordered to pay a fine of \$550 and to submit a DNA sample and pay the \$250 testing surcharge. This no-merit appeal followed.

The no-merit report first examines the validity of Stalsberg’s no-contest plea. Under the United States Constitution, a guilty or no-contest plea must be affirmatively shown to be knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶25, 293 Wis. 2d 594, 716 N.W.2d 906. The legislature established in WIS. STAT. § 971.08 certain requirements for ensuring that a plea is knowing, voluntary, and intelligent. Our supreme court has provided

additional requirements in *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), and subsequent cases. *Brown*, 293 Wis. 2d 594, ¶23.

The court addressed Stalsberg personally, engaged him in a thorough colloquy<sup>2</sup> that verified his understanding and that the pleas were knowing, voluntary, and intelligent, *see id.*, ¶35, and properly looked to the plea questionnaire/waiver of rights form Stalsberg signed reflecting his understanding of the elements, the potential penalties, and the rights he agreed to waive, *see State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. Stalsberg could not make a prima facie case that the court did not comply with the procedural requirements of WIS. STAT. § 971.08. *See Bangert*, 131 Wis. 2d at 274. A review of the record discloses nothing that qualifies as the “manifest injustice” a defendant must establish to withdraw a plea after sentencing. *See State v. Cain*, 2012 WI 68, ¶26, 342 Wis. 2d 1, 816 N.W.2d 177. A challenge to the pleas would be meritless.

The report also examines whether a nonfrivolous issue exists with regard to the circuit court’s exercise of its sentencing discretion. There would be no arguable basis to claim an erroneous exercise of discretion, *see State v. Gallion*, 2004 WI 42, ¶¶41-43 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether that discretion was erroneously exercised. *Gallion*, 270 Wis. 2d 535, ¶17.

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<sup>2</sup> The no-merit report mistakenly states that the court omitted the noncitizen advisories WIS. STAT. § 971.08(1)(c) requires.

The court addressed the primary sentencing factors, *State v. Spears*, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999), and the relevant sentencing objectives, *Gallion*, 270 Wis. 2d 535, ¶¶40-41, and set forth a “rational and explainable basis” for its decision, *id.*, ¶76 (citation omitted).

The victim again renounced her earlier accusations but the court appeared not to find them credible. It focused on the seriousness of the offense, Stalsberg’s character, and the need to protect the public. The weight to be given to these factors is a determination particularly within the court’s discretion. *Ocanas*, 70 Wis. 2d at 185. The court commented on the significance of the battery, Stalsberg’s history of getting into trouble despite his education, employment history, and freedom from drug abuse, and the threat posed by his usual method of using a gun when he is frustrated.

The three-year sentence and \$550 fine is well under his sixteen-year, \$35,000 exposure. We cannot say that the sentence imposed “is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.* Our independent review of the record reveals no other nonfrivolous issues. Therefore,

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 Kaitlin A. Lamb is relieved of further representing Stalsberg in this matter.

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