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 IV

April 1, 2016

To:

Hon. Todd P. Wolf
Circuit Court Judge, Br. 3
Wood County Courthouse
400 Market St
Wisconsin Rapids, WI 54494

Cindy Joosten
Clerk of Circuit Court
Wood County Courthouse
P.O. Box 8095
Wisconsin Rapids, WI 54494

Craig S. Lambert
District Attorney
P. O. Box 8095
Wisconsin Rapids, WI 54494-8095

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

Steven Zaleski
The Zaleski Law Firm
10 E. Doty St., Ste. 800
Madison, WI 53703

John J. Zopfi
7383 County Highway N
Arpin, WI 54410

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

2015AP1835-CRNM State of Wisconsin v. John J. Zopfi (L.C. # 2013CF270)

Before Kloppenburg, P.J., Higginbotham and Blanchard, JJ.

Attorney Steven Zaleski, appointed counsel for John Zopfi, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)[1]; ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Zopfi's plea, the effective assistance of defense counsel, the circuit court decision denying Zopfi's motion to disclose a confidential informant, or the circuit

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

court's sentencing decision. Zopfi was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Zopfi was charged with three counts of delivery of a narcotic drug. Zopfi moved to compel disclosure of the State's confidential informant, and the court denied the motion. Pursuant to a plea agreement, Zopfi pled no contest to one count of delivery of a narcotic drug, and the State agreed to move to dismiss and read in the other two counts and to recommend two years of probation with thirty days of conditional jail time. The court imposed two years of probation, sentence withheld, with thirty days of conditional jail time.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Zopfi's plea. A postsentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire and waiver of rights form that Zopfi signed, satisfied the court's mandatory duties to personally address Zopfi and determine information such as Zopfi's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Zopfi's plea would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a claim of ineffective assistance of counsel. We agree with counsel's assessment that there are no arguable grounds to claim that counsel was ineffective. *See* ***Strickland v. Washington***, 466 U.S. 668, 687-694 (1984) (claim of ineffective assistance of counsel must show that counsel's performance was deficient and that the deficient performance prejudiced the defense).

The no-merit report also addresses whether there would be arguable merit to a challenge to the circuit court's decision to deny Zopfi's motion to compel disclosure of the State's confidential informant. We agree with counsel that Zopfi's valid plea waived any challenge to the court's decision on the motion. *See* ***State v. Andrews***, 171 Wis. 2d 217, 223, 491 N.W.2d 504 (Ct. App. 1992) (valid no-contest plea waives all nonjurisdictional defects and defenses).

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to the circuit court's decision as to sentencing. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the court's decision was reasonable. ***State v. Ramuta***, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the severity of the offense, Zopfi's character and criminal history, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The court considered probation as the first option and determined that, given

the facts of this case, probation was appropriate. *See* ***id.***, ¶25. We discern no erroneous exercise of the court's sentencing discretion.[2]

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of any further representation of John Zopfi in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] The judgment of conviction also reflects a $250 DNA surcharge. The no-merit report asserts that there would be no arguable merit to a challenge to the DNA surcharge because Zopfi was sentenced after the effective date of WIS. STAT. § 973.046(1r)(a), which imposes a mandatory DNA surcharge. *See* 2013 Wis. Act 20, §§ 2355, 9426(1)(am). We note that, while Zopfi committed his offense prior to the effective date of the statute, there would be no arguable merit to a claim that the imposition of the mandatory DNA surcharge violated the ex post facto clause because the record indicates that this was Zopfi's first felony conviction. *See* ***State v. Scruggs***, 2015 WI App 88, ¶¶12-13, 365 Wis. 2d 568, 872 N.W.2d 146 (rejecting claim that imposition of the mandatory DNA surcharge in same scenario violated the ex post facto clause, because "the DNA surcharge is specifically dedicated to fund the collection and analysis of DNA samples and the storage of DNA profiles—all regulatory activities—evidenc[ing] a nonpunitive cost-recovery intent," and "[t]he relatively small size of the surcharge also indicates that the fee … [is] not intended to be a punishment, but rather an administrative charge to pay for the collection of the sample … along with the expenditures needed to administer the DNA data bank").