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**DISTRICT IV**

June 17, 2016

To:

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

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2016AP620-CRNM      State of Wisconsin v. Traveon C. Spencer (L.C. # 2012CF1772)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Traveon Spencer appeals from a judgment of conviction for one count of second-degree sexual assault of an unconscious victim. Spencer's appellate counsel has filed a no-merit report and seeks to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2013-14),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Spencer received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and

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

an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

Spencer was charged with second-degree sexual assault of an unconscious victim. M.W. reported to the police on May 5, 2012, that the previous night she had been sexually assaulted by Spencer, an acquaintance who occasionally stayed at the apartment she shared with her boyfriend. She described taking prescribed medications in the evening and falling deeply asleep due to the combined effects of the medications. At the time, Spencer was in the apartment, and M.W.'s boyfriend had left. M.W. described being in her bed in the night and becoming conscious of a person who was not her boyfriend on top of her and penetrating her vagina. When she woke up the next morning, she found blankets covering her face. She found the underwear and nightclothes she had worn to bed on the floor. When she reported the assault, she was taken to a hospital, and a sexual assault examination was completed. Human DNA was recovered from swabs from M.W.'s anal area. When police interviewed Spencer, he admitted being in the apartment that night but denied having sex with M.W. A buccal swab was taken from Spencer. Analysis by the state crime lab showed that Spencer was included as a possible contributor to the mixture of male and female human DNA found on M.W., and that the likelihood was 426 billion times greater that it was a combination of DNA from M.W. and Spencer than it was a combination of M.W. and a random unrelated person.

At trial, the jury heard testimony from M.W., police officers involved in the investigation, the nurse who examined M.W., and the crime lab analyst. The defense additionally called the defense investigator and the man who was M.W.'s boyfriend at the time. The defense questioned M.W.'s credibility, highlighted alleged inconsistencies in her statements, and suggested that Spencer's DNA could have been transferred to M.W. by common use of a

bath towel. The jury found Spencer guilty. Spencer was sentenced to eight years in prison and eight years of extended supervision, consecutive to the federal sentence he was serving.

The no-merit report addresses whether there was sufficient credible evidence to support the verdict. The report sets forth the applicable standard of review and the evidence satisfying the elements of each crime. The report also concludes that no procedural errors occurred with respect to the jury selection or admission of evidence, and that no basis exists for a claim of ineffective assistance of counsel. The report discusses whether the sentence is the result of an erroneous exercise of discretion or can be considered excessive and finds no arguable merit to either issue. The report reviews Spencer's sentence with regard to the DNA surcharge and sentence credit and concludes that neither issue has arguable merit. It concludes that there is no arguable merit to a claim that Spencer's rights under WIS. STAT. § 976.05(3)(a) were violated. Under that statute, which governs interstate detainers, Spencer was entitled to a final disposition of the case within a 180-day period if he so requested. He did so. However, the statute provides that "for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." Sec. 976.05(3)(a). In this case, Spencer sought to delay the trial for the purpose of investigating the hiring of his own DNA expert, and the court granted the continuance on that basis.

This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit and that no procedural trial errors occurred.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Spencer further in this appeal.

Upon the foregoing reasons,

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 from further representing Spencer in this matter. *See* WIS. STAT. RULE 809.32(3).

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