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**DISTRICT III**

August 23, 2016

To:

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Outagamie County Courthouse  
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You are hereby notified that the Court has entered the following order:

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2015AP1942-CRNM      State of Wisconsin v. Tyler J. Layoff (L.C. No. 2014CF469)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Tyler Layoff filed a no-merit report concluding there is no arguable basis for Layoff to withdraw his no-contest pleas or challenge the sentences imposed for three offenses. Layoff was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged Layoff with two counts of battery to an officer, resisting an officer, two counts of criminal damage to property and two counts of disorderly conduct, all as

repeat offenses. Pursuant to a plea agreement, Layoff entered no-contest pleas to one count each of battery to an officer, resisting an officer and criminal damage to property, all as a repeater. The remaining charges were dismissed and read-in for sentencing purposes.

According to the complaint, which served as the factual basis for the pleas, Layoff went to a police station to report that he had been involved in a argument with his parents and “snapped,” and damaged his parents’ back door and vehicle. Layoff’s mother appeared at the police station shortly thereafter and, while officers spoke with her, Layoff became very loud and uncooperative, threatened to kill one of the officers and his family, attempted to kick and scratch another officer, and then kneed him in the groin. Layoff also scratched another officer’s wrist, spit at officers, continued to scream and resist arrest, and attempted to kick out a squad car window.

The circuit court accepted Layoff’s no-contest pleas and sentenced him to two years’ initial confinement and three years’ extended supervision on the battery to an officer count, and imposed consecutive terms of probation on the resisting and criminal damage counts.

The record discloses no arguable manifest injustice upon which Layoff could withdraw his no-contest pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court’s colloquy, supplemented by a Plea Questionnaire/Waiver of Rights form, with an attached recitation of the elements of the offenses, adequately informed Layoff of the constitutional rights he waived by pleading no contest, the elements of the offenses, and the potential penalties. Before Layoff entered his no-contest pleas, two doctors confirmed that he was competent to proceed. Layoff told the court he was twenty-six years old, had completed

twelve years of schooling, understood English and could read and write. The court's colloquy with Layoff disclosed no problems with his ability to understand the proceedings.

When reciting the maximum penalties, the court neglected to advise Layoff that the maximum penalty for battery to an officer was increased from six years to eight years based on his repeater status. However, the plea questionnaire accurately advised Layoff of the total imprisonment for these offenses. In addition, at the sentencing hearing, defense counsel alerted the court to the mistake and the court gave Layoff an opportunity to withdraw his pleas on that basis. Layoff declined.

The court also failed to advise Layoff that it was not bound by the terms of the plea agreement. See *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14. However, that omission was harmless because the State made no sentencing concessions in the plea agreement. Layoff's postconviction counsel also stated that, after conferring with Layoff, he could not assert in good faith that Layoff failed to understand this information when entering his pleas.

The court also failed to advise Layoff of potential deportation consequences as required under WIS. STAT. § 971.08(1)(c) (2013-14).<sup>1</sup> However, that omission is also harmless because, according to the presentence investigation report (PSI), Layoff was born in the United States and is therefore a citizen.

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

The record shows Layoff's pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of valid no-contest pleas constitutes a waiver of nonjurisdictional defects and defenses. *Id.* at 293.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed consecutive sentences totaling eight and one-half years' initial confinement and three years' extended supervision. The court told Layoff it was attempting to fashion a disposition based on his rehabilitative needs; the seriousness of the offenses; community protection; Layoff's background, age, education, and limitations; and both his positive and negative history.<sup>2</sup> The court considered no improper factors and the sentences are not arguably so disproportionate to the offenses as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The PSI included a COMPAS evaluation. We held this appeal in abeyance pending the Wisconsin Supreme Court's decision in *State v. Loomis*, 2016 WI 68, \_\_\_ Wis. 2d \_\_\_, 881 N.W.2d 749, regarding whether the circuit court's consideration of a COMPAS evaluation at sentencing violates a defendant's due process rights. The court concluded the COMPAS risk assessment can be used at sentencing, but circumscribed its use. *Id.*, ¶35. The PSI must contain a written advisement listing its limitations. *Id.*, ¶100. The PSI in Layoff's case complies with that requirement. The court in *Loomis* prohibited the COMPAS risk assessment from being used to determine whether an offender should be incarcerated, the severity of the sentence, or whether an offender can be supervised safely and effectively in the community. *Id.*, ¶98. The sentencing

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<sup>2</sup> Layoff had previously assaulted another officer.

court here properly used the risk assessment scores. Finally, *Loomis* requires the court to explain the factors in addition to the COMPAS risk assessment that independently support the sentence. *Id.*, ¶99. Layoff's PSI and the sentencing court provided substantial support for the sentences independent of the COMPAS risk assessment.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven D. Phillips is relieved of his obligation to further represent Layoff in this matter. *See* WIS. STAT. RULE 809.32(3).

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