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**DISTRICT II**

September 7, 2016

To:

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Kenosha County Courthouse  
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Dale M. Debruin  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP432-CRNM      State of Wisconsin v. Dale M. Debruin (L.C. #2013CF973)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Dale M. Debruin appeals from a judgment convicting him of disorderly conduct and attempting to flee or elude a traffic officer, both as a repeater. Debruin's appellate counsel 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). Debruin filed a response. After reviewing the record, counsel's report, and

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

Debruin's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

In October 2014, Debruin pled guilty to disorderly conduct and attempting to flee or elude a traffic officer, both as a repeater. According to the complaint, Debruin threatened employees at a post office when they did not have a piece of mail he was expecting. Upon leaving the post office, police attempted to pull Debruin over, and he led them on a high speed chase before eventually stopping. For his actions, the circuit court withheld sentence and ordered two years<sup>2</sup> of probation with five months of conditional jail time.

After sentencing, Debruin filed a motion for sentence credit and a motion to be relieved of the DNA surcharges imposed in his case. The circuit court denied the first motion but granted the second motion. This no-merit appeal follows.

The no-merit report addresses whether Debruin's guilty pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Debruin that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis.2d 594, 716 N.W.2d 906.<sup>3</sup> A signed plea questionnaire and waiver of rights form was entered into the record. Furthermore, the court

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<sup>2</sup> The circuit court ordered one year of probation on the disorderly conduct count and two years of probation on the fleeing/eluding count. Because terms of probation cannot be made consecutive, Debruin will serve a total of two years.

<sup>3</sup> There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Debruin's plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2). Indeed, at the plea hearing, Debruin indicated that he was born in Wisconsin.

correctly determined that the allegations in the complaint provided a factual basis for the crimes charged. We agree with counsel that any challenge to the entry of Debruin's pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly denied Debruin's motion for sentence credit. Debruin had sought credit for time spent in custody before posting cash bail. The circuit court denied the motion, noting that credit cannot be awarded when sentence is withheld. The court's position on credit is well established. *See State v. Gloudemans*, 73 Wis. 2d 514, 519, 243 N.W.2d 220 (1976) (claims of credit for pretrial incarceration may be made only as to sentences imposed, not to periods of confinement imposed as a condition of probation). Accordingly, we agree with counsel that any challenge to the denial of the motion for sentence credit would lack arguable merit.

The no-merit report does not address the circuit court's decision at sentencing.<sup>4</sup> Instead, it focuses only on whether Debruin was afforded his right to allocation. We agree with counsel that the record demonstrates that Debruin was afforded his right to allocation. We also conclude that a challenge to the circuit court's decision at sentencing would lack arguable merit. The term of probation was within the maximum allowed. Moreover, Debruin's ability to challenge the imposition of probation is limited by the fact that his counsel requested it. *See State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (defendants may not attack their sentence on appeal when the circuit court imposes the sentence requested by them).

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<sup>4</sup> Counsel is obligated to address all 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.

As noted, Debruin filed a response to counsel's no-merit report. In it, he appears to suggest that his pleas were coerced and that he had a valid defense to his crimes. There are two problems with these assertions. First, any suggestion of coercion is belied by the record. At the plea hearing, the circuit court specifically asked Debruin, "Has anybody threatened, pressured, or forced you to obtain any plea of guilt?" He answered, "No." Second, Debruin forfeited the right to present a defense when he entered his pleas. See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. For these reasons, we are not persuaded that Debruin's response presents an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. 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 Gregory Bates of further representation in this matter.

Upon the foregoing reasons,

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 Gregory Bates is relieved of further representation of Debruin in this matter.

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