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**DISTRICT IV**

October 12, 2016

*To*:

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

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2015AP1485-CRNM State of Wisconsin v. Theodore F. Spanton (L.C. # 2007CF18)

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

Attorney Colleen Marion, appointed counsel for Theodore Spanton, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Counsel provided Spanton with a copy of the report, and both counsel and this court advised him of his right to file a response. Spanton has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our

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

independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Spanton was convicted in 2007 of one count of delivery of a controlled substance and placed on probation. In 2014 his probation was revoked and he was returned to the circuit court for sentencing. The court imposed five years of initial confinement and five years of extended supervision.

In February 2016 we placed this appeal on hold pending a decision from the Wisconsin Supreme Court regarding the use of the COMPAS assessment in sentencing. That opinion has been released. ***State v. Loomis***, 2016 WI 68, 371 Wis. 2d 235, 881 N.W.2d 749. The test applied by the reviewing court was whether the sentencing court's use of COMPAS "was … determinative in deciding whether Loomis should be incarcerated, the severity of the sentence or whether he could be supervised safely and effectively in the community." ***Id.***, ¶109.

In the present case, although the prosecutor discussed the COMPAS assessment in argument, the circuit court does not appear to have mentioned it in sentencing. Therefore, we conclude that it would not be arguably meritorious to argue that the COMPAS was "determinative" in sentencing.

The no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

After sentencing, Spanton moved for resentencing on the ground that there was a new factor. The motion noted errors made by the State at sentencing in describing certain programs and their interaction with the sentence the State was recommending. The circuit court denied the motion. It concluded that even if the corrected information legally qualified as a new factor, the court would not change the sentence. After reviewing the sentencing transcript, the court concluded that the sentence was not based on treatment considerations, but more on the nature of the offense, the need to protect the public, and Spanton's past record.

The no-merit report notes that, under applicable law, the circuit court's decision to grant a new-factor motion is ultimately discretionary. The report further states that counsel is not aware of any basis to argue that the court erroneously exercised its discretion in denying the motion. We agree that the issue lacks arguable merit.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Marion is relieved of further representation of Spanton in this matter. *See* WIS. STAT. RULE 809.32(3).

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