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 III

October 21, 2016

To:

Hon. Dee R. Dyer
Circuit Court Judge
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
320 S. Walnut Street
Appleton, WI 54911

Erica L. Bauer
Bauer & Farris, LLC
Zuelke Bldg., Ste. 410
103 W. College Ave.
Appleton, WI 54911

Carrie A. Schneider
District Attorney
320 S. Walnut St.
Appleton, WI 54911

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Brandon A. Uphold 446643
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2015AP375-CRNM State of Wisconsin v. Brandon A. Uphold
(L. C. No. 2012CF573)

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

Counsel for Brandon Uphold has filed a no-merit report concluding no grounds exist to challenge Uphold's convictions for robbery with use of force and identity theft for financial gain,

both offenses as party to a crime and as a repeater.[1] Uphold has filed a response claiming the State breached the plea agreement and the circuit court imposed the sentence without "documentation" of Uphold's mental health diagnoses. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.[2]

The State charged Uphold with robbery by use of force, identity theft for financial gain and misdemeanor battery, all as party to a crime and as a repeater. The charges arose from allegations that Uphold, along with other individuals, planned to rob someone in Appleton and targeted a woman walking by herself on College Avenue. Uphold followed the woman, ran up behind her in a parking lot, and began beating her until he was able to obtain her purse. Uphold and the others then purchased items using the victim's stolen credit card. In exchange for his no-contest pleas to the robbery and identity-theft charges, the State agreed to dismiss and read in the battery charge and recommend no more than four years' initial confinement, concurrent to Uphold's sentence on a theft conviction in Outagamie County Circuit Court case No. 2012CM1058, but consecutive to any other sentence he was then serving. The State remained free to argue regarding the length of extended supervision and other conditions. Out of

[1] We note that after counsel filed the no-merit report, Uphold submitted a letter suggesting his appellate counsel had a conflict of interest because she "is from the same office" as Genelle M. Johnson, one of Uphold's trial attorneys who withdrew from representation. In a response to Uphold's letter, counsel clarified that she was in private practice with attorney Johnson from 2007 to the spring of 2009, and attorney Johnson represented Uphold from August 2012 until February 2013. This presents no obvious conflict. *See* SCR 20:1.7. Moreover, counsel indicated that she advised Uphold during their first conference that she had "previously worked alongside attorney Johnson," and Uphold "raised absolutely no concern about it." Uphold did not dispute counsel's clarification.

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

a maximum possible thirty-one-year sentence, the court imposed consecutive sentences, consisting of ten years' initial confinement and eight years' extended supervision.

The record discloses no arguable basis for withdrawing Uphold's no contest pleas. The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Uphold completed, informed Uphold of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering no-contest pleas. To the extent Uphold contends the State breached the plea agreement because he was sentenced to more than four years' initial confinement, the record belies this claim. The State's sentencing recommendation complied with the plea agreement. Further, the court confirmed Uphold's understanding 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. The court advised Uphold of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), and found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Uphold committed the crimes charged. The circuit court also confirmed that medications Uphold was taking for mental illness did not interfere with his ability to understand the proceedings. The record shows the pleas were knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offenses; Uphold's character, including his lengthy criminal history; the need to protect the public; and the mitigating factors Uphold raised. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Uphold's sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Uphold contends the sentencing court was not given documentation of Uphold's "multiple mental health diagnoses." Uphold's mental health and diagnoses, however, were discussed in the presentence investigation report and mentioned at sentencing. Further, during Uphold's allocution, he stated that he did not want to use his mental health as an excuse for his conduct. There is no arguable merit to a claim that the sentencing court was unaware of Uphold's mental health issues.

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

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

IT IS FURTHER ORDERED that attorney Erica L. Bauer is relieved of further representing Uphold in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals