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**DISTRICT III**

December 28, 2016

To:

Hon. Peter C. Diltz  
Circuit Court Judge  
Door County Justice Center  
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Sturgeon Bay, WI 54235

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Brian M. Lemens  
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Sturgeon Bay, WI 54235

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

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2016AP32-CRNM	State of Wisconsin v. Brian M. Lemens
2016AP33-CRNM	(L. C. Nos. 2014CM226, 2015CM26)

Before Hruz, J.<sup>1</sup>

Counsel for Brian Lemens has filed a no-merit report in these consolidated matters concluding no grounds exist to challenge Lemens' convictions for misdemeanor theft and bail jumping, both as repeaters. Lemens was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

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<sup>1</sup> These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

(1967), we conclude no issue of arguable merit appears, and the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

The first of the two cases charged Lemens with misdemeanor theft and disorderly conduct, both as a repeat offender, after he stole a bicycle from the back of a tavern in Sturgeon Bay while intoxicated. The incident was caught on video, and although the bicycle's owner initially did not want to pursue charges, he changed his mind after the bike was not returned after several days. The second case charged Lemens with drinking at a bar in violation of bond conditions requiring absolute sobriety.

Lemens agreed to plead no contest to misdemeanor theft and bail jumping as repeaters, and the State agreed to move to dismiss the disorderly conduct charge as a repeater. The court adopted the parties' joint sentencing recommendation of thirty days' jail on the theft and twenty days' jail on the bail jumping, consecutively, with ten days of each sentence stayed if Lemens paid the financial obligations associated with the offenses within sixty days.

There is no arguable basis upon which Lemens could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's plea colloquy, buttressed by the plea questionnaire and waiver of rights form with attachments, informed Lemens of the constitutional rights he waived by pleading no contest, the elements of the offenses, and the potential punishment. Although the court failed to personally advise Lemens it was not bound by the parties' agreement, the error was harmless because Lemens was not affected by the defect in the colloquy as he received the benefit of the joint plea agreement. *See State v. Johnson*, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441. The criminal complaints and attached police reports provided an adequate factual basis supporting the

convictions. Lemens' pleas were freely, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no-contest or guilty plea constitutes a waiver of nonjurisdictional defenses and defects. *Id.* at 265-66.

The record also discloses no basis for challenging the circuit court's sentencing discretion. A defendant who affirmatively joins or approves a sentence recommendation cannot attack the sentence on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

This court's independent review discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Suzanne Hagopian is relieved of further representing Lemens in these matters.

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