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January 11, 2017

To:

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Alexander B. Sahagian
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You are hereby notified that the Court has entered the following opinion and order:

2016AP1166-CRNM State of Wisconsin v. Alexander B. Sahagian (L.C. # 2013CF3814)

Before Hagedorn, J.¹

Alexander B. Sahagian appeals from a judgment convicting him of graffiti. Sahagian's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Sahagian received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 2013-14 version.

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

In July 2015, Sahagian pled no contest to one count of graffiti in violation of WIS. STAT. § 943.017(1). The charge stemmed from the spray painting of an office building in Milwaukee. The circuit court imposed and stayed a sixty-day sentence and placed Sahagian on probation for six months. It also ordered a \$50 fine. This no-merit appeal follows.

The no-merit report addresses whether Sahagian’s no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Sahagian 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 906.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that a challenge to the entry of Sahagian’s no contest plea would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing.³ The record reveals that the court’s sentencing decision had a “rational

² There are a few exceptions to this. For example, 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, as there is no indication that Sahagian’s plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. The court also failed to discuss the elements of the offense. This failure does not present a potentially meritorious issue for appeal, as this information was attached to Sahagian’s signed plea questionnaire and waiver of rights form, which the court referenced during its colloquy. Finally, the court did not ascertain a factual basis for the plea. This omission does not present a potentially meritorious issue for appeal, as our review of the record persuades us that a factual basis existed.

³ In the no-merit report, counsel uses the phrase “abuse of discretion.” We have not used the phrase “abuse of discretion” since 1992, when our supreme court replaced the phrase with “erroneous exercise of discretion.” See, e.g., *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). Moreover, the decision does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Sahagian’s sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.⁴ 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 Chris Bailey 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 Chris Bailey is relieved of further representation of Sahagian in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

⁴ During the circuit court proceedings, a question arose as to Sahagian’s competency to proceed. Ultimately, the circuit court found Sahagian competent based, in part, upon the opinion of a court-appointed examiner. Because the record supports the court’s finding, we conclude that any challenge to its competency determination would lack arguable merit.