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March 16, 2017

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

2015AP1818-CRNM State of Wisconsin v. Kevin B. Hutchins, Jr. (L.C. # 2013CF4975)

Before Brennan, P.J., Kessler and Dugan, JJ.

Kevin B. Hutchins, Jr., pled guilty to one count each of second-degree recklessly endangering safety, fleeing an officer, and operating a motor vehicle while intoxicated as a second or subsequent offense causing injury. The circuit court imposed three consecutive terms of imprisonment, namely, five years of initial confinement and three years of extended supervision for endangering safety, eighteen months of initial confinement and one year of extended supervision for fleeing an officer, and three years of initial confinement and one year of extended supervision for operating while intoxicated as a second or subsequent offense causing injury. As additional penalties for the latter count, the circuit court ordered a twenty-four month

license revocation and required that Hutchins's vehicle be equipped with an ignition interlock device for twenty-four months. At a subsequent restitution hearing, the circuit court ordered restitution of $185. Hutchins appeals.

Appellate counsel, Attorney Kevin M. Gaertner, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2015-16).[1] In the no-merit report, counsel discusses Hutchins's waiver of a preliminary hearing, the validity of Hutchins's guilty pleas, and the circuit court's exercise of sentencing discretion. Hutchins filed a response stating that he had defenses to the charges, challenging the validity of his pleas and sentences, and alleging ineffective assistance of counsel. *See* RULE 809.32(1)(e). This court has considered counsel's no-merit report and Hutchins's response, and we have independently reviewed the record. We conclude that no potential issue is arguably meritorious, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Milwaukee County Deputy Sheriff Scott Griffin was in a marked squad on October 29, 2013, at 2:49 a.m. when he saw a Ford Taurus drive through several construction barricades. Griffin activated his emergency lights and sirens and attempted to stop the driver, later identified as Hutchins, but Hutchins fled, leading Griffin on a high speed chase that covered seven miles of city streets and highways and involved speeds of up to 109 miles per hour. The chase ended when Hutchins crashed the Taurus into a set of barrels on a highway entrance ramp. The vehicle became airborne and struck Griffin's squad car, which in turn struck the left ramp wall, causing Griffin numerous injuries.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Two additional deputies who had joined the pursuit approached Hutchins at the scene of the accident and attempted to remove him from his vehicle, but he struggled, fought, and swore at the officers. Based on the odor of alcohol emanating from Hutchins, his slurred speech, glassy eyes, and erratic driving, the officers believed Hutchins was intoxicated. They eventually extracted him from the Taurus and arranged to transport him to a hospital, where he attacked a nurse. Pursuant to a search warrant, hospital personnel drew a sample of Hutchins's blood, which later revealed a blood alcohol concentration of .18. Records maintained by the Wisconsin Department of Transportation and the Milwaukee County Circuit Court showed that Hutchins had two prior convictions for operating a motor vehicle while intoxicated and that, at the time of the incident on October 29, 2013, he was out of custody after posting bail for a charge of second-degree sexual assault.

The State charged Hutchins with seven crimes: (1) second-degree recklessly endangering safety; (2) fleeing a traffic officer resulting in bodily harm; (3) operating a motor vehicle while intoxicated as a second or subsequent offense causing injury; (4) battery to an emergency medical care provider; (5) felony bail jumping; (6) operating a motor vehicle while intoxicated as a third offense; and (7) resisting an officer. Hutchins disputed the charges for some time, but he eventually decided to resolve the charges with a plea bargain.

Appellate counsel first discusses whether Hutchins could challenge his waiver of the right to a preliminary examination. *See* WIS. STAT. § 971.02. There would be no arguable merit to such a challenge. A defendant who claims error occurred at the preliminary examination stage may obtain relief only before conviction. *See* ***State v. Webb***, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991).

Both appellate counsel and Hutchins discuss whether Hutchins could pursue an arguably meritorious challenge to the validity of his guilty pleas. *See* ***State v. Bangert***, 131 Wis. 2d 246, 259-60, 389 N.W.2d 12 (1986) (valid guilty pleas must be knowing, intelligent, and voluntary). We conclude he could not. At the outset of the plea proceeding, the State described the parties' plea bargain. Hutchins would plead guilty as charged to second-degree recklessly endangering safety and operating while intoxicated as a second or subsequent offense causing injury. He would also plead guilty to an amended charge of fleeing an officer. In exchange, the State would recommend consecutive sentences totaling thirteen years and six months of imprisonment, bifurcated as six years and six months of initial confinement and seven years of extended supervision. The State would further recommend an AODA assessment and a twenty-four month driver's license revocation and would request an order that Hutchins maintain an ignition interlock device in his vehicle for twenty-four months. The State would move to dismiss and read in the remaining charges in the instant case and would take no position on whether the sentences in this matter should be consecutive or concurrent to Hutchins's sentences in unrelated proceedings. Hutchins confirmed that he understood the plea agreement and said that he had not been threatened or promised anything else to induce his guilty pleas.

The circuit court explained to Hutchins that he faced a ten-year term of imprisonment and a $25,000 fine upon conviction of second-degree recklessly endangering safety, a six-year term of imprisonment and a $10,000 fine upon conviction for operating a motor vehicle while intoxicated as a second or subsequent offense causing injury, and a forty-two month term of imprisonment and a $10,000 fine upon conviction for fleeing. *See* WIS. STAT. §§ 941.30(2) (2013-14), 346.63(2)(a)1. (2013-14), 346.65(3p) (2013-14), 346.04(3) (2013-14), 346.17(3) (2013-14), and 939.50(3)(g-i) (2013-14). The circuit court also described the driver's license

restrictions that Hutchins faced. The circuit court told Hutchins that it could impose the maximum statutory penalties if it chose to do so and that it was not bound by the terms of the plea bargain or by any sentencing recommendations. Hutchins said he understood.

The record contains a signed guilty plea questionnaire and waiver of rights form. The form reflects that Hutchins was forty-one years old at the time of his pleas, had a high school diploma, and had completed two years of post-secondary school education. Hutchins confirmed that he reviewed the form with his trial counsel and that he understood its contents. The circuit court explained to Hutchins that by pleading guilty he would give up the constitutional rights listed on the form, and the circuit court highlighted some of those rights. Hutchins told the circuit court that he understood his rights and wanted to give them up and plead guilty.

Hutchins also told the circuit court that he had reviewed and understood the addendum attached to the guilty plea questionnaire. The addendum bears the signatures of both Hutchins and his trial counsel. It reflects Hutchins's acknowledgment that he had read the complaint and that, by pleading guilty, he would give up his rights to raise defenses, to challenge the validity of his arrest, and to seek suppression of his statements and other evidence. Hutchins confirmed on the record that he wanted to give up his defenses and his opportunity to challenge the actions of law enforcement.

A circuit court is required to warn a defendant at the time of a guilty plea that if he or she is not a citizen of the United States, the guilty plea may lead to deportation or exclusion from this country. *See* WIS. STAT. § 971.08(1)(c). As both appellate counsel and Hutchins point out in their submissions, the circuit court failed to give Hutchins the required deportation warnings, but a defendant cannot move for postconviction relief based on such a failure unless the defendant

can show that the pleas are likely to result in the defendant's deportation. *See* ***State v. Douangmala***, 2002 WI 62, ¶¶4, 25, 253 Wis. 2d 173, 646 N.W.2d 1. Here, neither the record nor Hutchins himself suggests he is subject to deportation, and appellate counsel advises that no basis exists to question Hutchins's status as a citizen of the United States. The failure to give deportation warnings therefore provides no basis for further postconviction proceedings.

"[The] circuit court must establish that a defendant understands every element of the charges to which he pleads." ***State v. Brown***, 2006 WI 100, ¶58, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court in this case summarized the elements of each offense on the record, and Hutchins told the circuit court he understood the nature of each charge.[2]

A guilty plea colloquy must include an inquiry sufficient to satisfy the circuit court that the defendant committed the crimes charged. *See* WIS. STAT. § 971.08(1)(b). Here, trial counsel stipulated to the facts in the criminal complaint. *See* ***State v. Black***, 2001 WI 31, ¶13, 242 Wis. 2d 126, 624 N.W.2d 363 (factual basis established when trial counsel stipulates on the record to the facts in the criminal complaint). Additionally, the circuit court asked Hutchins if the facts set forth in the criminal complaint were true. Hutchins responded that he disputed the suggestion that he intentionally hurt anyone other than himself, and he went on to explain why his actions did not demonstrate intent to cause injury. The circuit court reminded Hutchins that

[2] Copies of jury instructions are attached to Hutchins's guilty plea questionnaire, and we note that one of the attached instructions is applicable to the crime of operating a motor vehicle with a prohibited blood alcohol content as a second or subsequent offense causing injury. Hutchins, however, pled guilty to the similar crime of operating a motor vehicle while intoxicated as a second or subsequent offense causing injury. Because the circuit court correctly described to Hutchins the elements of the latter offense, the inapplicable jury instruction attached to the plea questionnaire does not suggest a basis for an arguably meritorious challenge to the guilty plea. The adequacy of the plea questionnaire is not at issue when the guilty plea colloquy demonstrates the defendant's understanding of the charges. *See* ***State v. Brandt***, 226 Wis. 2d 610, 621-22, 594 N.W.2d 759 (1999).

none of the crimes to which he was pleading guilty included an element of intent to harm. Hutchins then acknowledged that the allegations in the complaint were otherwise true, and he also admitted that he had two prior convictions for operating a motor vehicle while intoxicated. The circuit court properly established a factual basis for Hutchins's guilty pleas.

Hutchins suggests in his response to the no-merit report that he can challenge his guilty pleas because he entered them "in a very depress[ed] state of mind." In effect, Hutchins contends he was not competent to plead guilty. "[A] defendant is incompetent if he or she lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his or her defense." ***State v. Byrge***, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477. Here, the transcript of the plea hearing shows that Hutchins was familiar with the events underlying the charges, and he articulately discussed the details of the allegations with the circuit court. Nothing in the record and nothing in Hutchins's submission supports an arguably meritorious claim that his state of mind rendered him unable to understand the plea proceedings, consult with trial counsel, or assist in the preparation of his defense. We are satisfied that no basis exists for an arguably meritorious challenge to the validity of the pleas. *See* WIS. STAT. § 971.08 and ***Bangert***, 131 Wis. 2d at 266-72; *see also* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea).

Hutchins alleges in his response to the no-merit report that his trial counsel was ineffective. We assess claims of ineffective assistance of counsel under the familiar two-prong test described in ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prevail, the defendant must show that counsel's performance was deficient and that the deficiency prejudiced the

defense. ***Id.*** If a defendant fails to satisfy one prong of the ***Strickland*** test, a court need not consider the other. *See* ***id.*** at 697.

Hutchins alleges his trial counsel was ineffective for failing to advise Hutchins that "if he pled no contest to the [charges], he would not be subjected to a civil suit by ... Griffin." Hutchins fails to show any deficiency. Although a plea of no contest "'cannot be used collaterally as an admission in future civil litigation,'" *see* ***Kustelski v. Taylor***, 2003 WI App 194, ¶18, 266 Wis. 2d 940, 669 N.W.2d 780 (citation and brackets omitted), the litigation itself is not precluded, *see* WIS. STAT. § 904.10. Moreover, Hutchins shows no prejudice. First, he does not show that his guilty pleas were in fact used against him in a civil trial. Second, the circuit court is not required to accept a plea of no contest, *see* ***State v. Erickson***, 53 Wis. 2d 474, 476, 192 N.W.2d 872 (1972), and Hutchins does not demonstrate that the circuit court would have accepted such a plea here. Further pursuit of this issue would lack arguable merit.

Hutchins next suggests his trial counsel was ineffective for failing to pursue a defense of involuntary intoxication. A defense of involuntary intoxication requires a showing that defendant's intoxication was "involuntarily produced." *See* WIS. STAT. § 939.42; WIS JI—CRIMINAL 755A. Here, however, Hutchins told the circuit court during the plea hearing that he "made the wrong choice of drinking" on October 29, 2013, and he told the author of the presentence investigation report that he "had planned on getting drunk that night." Accordingly, there is no basis to conclude that trial counsel performed deficiently by failing to pursue a defense of involuntary intoxication. The claim is frivolous within the meaning of ***Anders***.

Hutchins next suggests that his trial counsel should have challenged the charges because the blame for his crimes lies with the person who served him alcohol. There is no merit to this

suggestion. A prosecutor has broad discretion to determine the charges that "properly reflect society's interests." *See* ***State v. Johnson***, 2000 WI 12, ¶29, 232 Wis. 2d 679, 605 N.W.2d 846. Nothing here suggests that the charges against Hutchins exceeded the scope of appropriate prosecutorial discretion, so trial counsel had no obligation to seek dismissal on this basis. *See* ***State v. Berggren***, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (counsel not ineffective for refraining from making a futile motion). Further pursuit of this issue would be frivolous.

Hutchins next says he had a defense because Griffin acted negligently by pursuing Hutchins, and he suggests his trial counsel was ineffective for failing to mount such a defense. The suggestion is meritless. "[I]t is no defense to a prosecution for a crime that the victim was contributorily negligent." ***State v. Lohmeier***, 205 Wis. 2d 183, 199, 556 N.W.2d 90 (1996). For the sake of completeness, we note that WIS. STAT. § 346.63(2)(b) provides that a person has a defense to operating while intoxicated causing injury if the person "proves by a preponderance of the evidence that the injury would have occurred even if [the person] had been exercising due care and [the person] had not been under the influence of an intoxicant." There is no basis to believe that Hutchins could have mounted such a defense. It is available in situations "where, because of the victim's conduct, an accident would have been unavoidable even if the defendant had been driving with due care and had not been under the influence." *See* ***Lohmeier***, 205 Wis. 2d at 195 & n.9. Nothing in the record here suggests that Griffin would have sustained any injury on October 29, 2013, if Hutchins had not driven his car at reckless speeds, become airborne, and landed on Griffin's squad car. A claim that trial counsel should have pursued such a defense is frivolous within the meaning of ***Anders***.

Perhaps relatedly, Hutchins suggests that the State did not disclose "exculpatory impeachment evidence" that "Griffin was pursuing Hutchins." The State is required to disclose exculpatory evidence, *see* WIS. STAT. § 971.23(1)(h), but Hutchins fails to demonstrate that evidence of the high speed chase was exculpatory. Regardless, the State disclosed the chase in the body of the criminal complaint and discussed the chase throughout the proceedings.[3]

We next consider whether Hutchins could pursue an arguable meritorious challenge to his sentences. We begin with Hutchins's assertion that the State breached the plea agreement at sentencing. A breach of a plea bargain may entitle a defendant to relief, but to be actionable, the breach must be material and substantial. *See* ***State v. Williams***, 2002 WI 1, ¶38, 249 Wis. 2d 492, 637 N.W.2d 733. At sentencing, the prosecutor described the recommended disposition:

> The State's making its recommendation as to six and half years of initial confinement, seven years of extended supervision. As well as the court will need to impose the driver's license revocation ... which is the 24 months based on the OWI 3rd causing injury, as well as a 24 month installation of ignition interlock device and an AODA assessment.

The foregoing precisely echoes the recommendation that the State promised to make at the time that Hutchins entered his guilty pleas. Although Hutchins is not entirely clear, he appears to complain because the prosecutor prefaced the recommendation by explaining that "this is the type of case where a substantial prison sentence is appropriate." We see no technical

[3] To the extent, if any, that Hutchins implies the defense did not receive a copy of the video recording of the chase that was filmed by Griffin's squad car camera, the sentencing transcript includes trial counsel's affirmative statements that he watched the video and discussed it with Hutchins.

error, let alone an actionable breach, in the State's characterization of its recommendation for thirteen and one-half years of imprisonment as "a substantial prison sentence."[4]

We next consider whether Hutchins might pursue other arguably meritorious challenges to his sentences. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

The circuit court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the

[4] To the extent Hutchins suggests the State breached the plea bargain by seeking restitution in this matter, the claim lacks merit. The record shows that the plea bargain was silent on the issue of restitution. *See* ***State v. Bowers***, 2005 WI App 72, ¶¶18-20, 280 Wis. 2d 534, 696 N.W.2d 255 (State does not breach plea bargain by seeking orders, including orders for restitution, that the parties did not address in the plea bargain).

offense, and the community. *See* ***id.*** The circuit court has discretion to determine the factors that are relevant in fashioning the sentence and the weight to assign to each relevant factor. ***Stenzel***, 276 Wis. 2d 224, ¶16.

The record here reflects an appropriate exercise of sentencing discretion. The circuit court indicated that punishment was the primary sentencing objective and discussed the factors relevant to that objective.

The circuit court considered the gravity of the offenses that Hutchins committed, pointing out that he caused a "horrendous accident" in "one of the most aggravated fleeing cases [the circuit court] had ever seen." The circuit court considered Hutchins's character, viewing this factor as both mitigating and aggravating. The circuit court acknowledged that letters submitted on Hutchins's behalf reflected his devotion to his children and his efforts to avoid the failures of his own absent father. On the other hand, the circuit court took into account that Hutchins had "a twenty-five year history of criminal activity" and that when he committed the offenses in this case he was "out on bail for raping the mother of [his] children," a crime for which he was subsequently convicted. *See* ***State v. Fisher***, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (criminal record spanning two decades is evidence of character). The circuit court also noted with alarm that Hutchins at one time was enrolled in the police academy "until he got himself convicted for trying to recruit a hit man," which the circuit court observed was "clearly an indication of a very defective character." The circuit court considered the need to protect the public, stating that "it's a major miracle that one or more people were not killed in this case." The circuit court acknowledged that the crimes here occurred during the early morning hours when traffic was at a minimum but gave this fact little weight because Hutchins's behavior,

including "weaving in and out" of traffic, "running on and off the freeway, [and] running red lights," posed a risk of death to any driver on the road.

The circuit court identified the factors that it considered in choosing sentences in this matter. The factors are proper and relevant.[5] Moreover, the sentences are not unduly harsh. A sentence is unduly harsh "'only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). Thus, if '"the sentence is within the statutory limit, appellate courts will not interfere unless clearly cruel and unusual.'" ***State v. Cummings***, 2014 WI 88, ¶75, 357 Wis. 2d 1, 850 N.W.2d 915 (citations and one set of quotation marks omitted). In this case, the circuit court viewed the facts as horrendous, life threatening, and exceptionally aggravated, and it fashioned Hutchins's sentences accordingly, stating they were "the minimum ... necessary to protect the public, based upon the facts of this case and the criminal history." Because the record reflects the circuit court properly applied appropriate standards to select lawful sentences that it viewed as required, no basis exists to challenge the sentences as unduly harsh. *See* ***id.***

[5] The presentence investigation report filed in this matter included a COMPAS assessment. COMPAS is a risk assessment tool used, in part, to predict recidivism. *See* ***State v. Loomis***, 2016 WI 68, ¶¶13-14, 371 Wis. 2d 235, 881 N.W.2d 749. A sentencing court may consider a COMPAS assessment, *see* ***id.***, ¶120, but the assessment may not be determinative in deciding whether the offender should be incarcerated, the severity of the sentence or whether the offender could be supervised safely and effectively in the community, *see* ***id.***, ¶98. In the present case, the circuit court said that it had read the presentence investigation report but did not mention the COMPAS assessment. We therefore conclude that no arguably meritorious basis exists to contend that COMPAS was determinative in sentencing.

We next conclude Hutchins could not mount an arguably meritorious challenge to the circuit court's decision to deny him eligibility for the Wisconsin substance abuse program and the challenge incarceration program. Successful completion of either prison program permits an inmate serving a bifurcated sentence to convert his or her remaining initial confinement time to extended supervision time. *See* WIS. STAT. §§ 302.045(1), 302.045(3m)(b), 302.05(1)(am), 302.05(3)(c)2. A circuit court exercises its discretion when determining a defendant's eligibility for these programs, and we will sustain the circuit court's conclusions if they are supported by the record and the overall sentencing rationale. *See* ***State v. Owens***, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. § 973.01(3g)-(3m).[6] In this case, the circuit court found Hutchins ineligible for the programs because the sentences it imposed included the minimum amount of initial confinement required. The eligibility decision was thus consistent with the sentencing rationale. Further pursuit of this issue would lack arguable merit.

Hutchins asserts he has an arguably meritorious claim that the circuit court sentenced him based on inaccurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1 (holding that a defendant has a due process right to be sentenced upon accurate information). To prevail on such a claim, the defendant must show both that the disputed information was inaccurate and that the sentencing court actually relied on the inaccurate information. *See* ***id.***, ¶26. A circuit court actually relies on inaccurate information when the court gives '"explicit attention' or 'specific consideration' to [the misinformation], so that the misinformation 'form[s] part of the basis for the sentence.'" ***Id.***, ¶14 (citation omitted).

[6] The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05; 973.01(3g).

Hutchins's theory that he was sentenced on the basis of misinformation turns on his statements during the plea colloquy that he did not intentionally harm anyone. The record shows, however, that the circuit court had the benefit of Hutchins's assurance that he did not intentionally cause injury, and the circuit court never said that it believed otherwise. Further pursuit of this issue would lack arguable merit.

We last consider whether Hutchins could pursue an arguably meritorious challenge to the restitution order. Hutchins stipulated to the amount of restitution imposed at the restitution hearing. *See* WIS. STAT. § 973.20(13)(c). A challenge would therefore lack arguable merit. *See* ***State v. Leighton***, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126.

Based on our independent review of the record, no other issues warrant discussion. To the extent that we have not explicitly addressed an issue that Hutchins's response might suggest, we have considered the implications of Hutchins's contentions in light of the record and our own assessment of the potential legal issues.[7] We conclude that any further proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed.

[7] While this court was completing its review of this matter, Hutchins submitted an additional document that he describes as his "affidavit" although it lacks a notarial seal or stamp. In the document, he continues to maintain that grounds exist for relief in this proceeding, and he also presents issues related to a second appeal in which he is involved. Regarding the second appeal, it remains pending and we will address it in due course. As to the instant matter, the new submission is untimely and unauthorized by the rules of appellate procedure. *See* WIS. STAT. CH. 809. Nonetheless, we have examined the document. A particularized discussion of its contents is not required. *See* ***State v. Foster***, 2014 WI 131, ¶63, 360 Wis. 2d 12, 856 N.W.2d 847. We are satisfied that nothing in the belated submission constitutes an arguably meritorious basis for further postconviction or appellate proceedings in this matter.

IT IS FURTHER ORDERED that Attorney Kevin M. Gaertner is relieved of any further representation of Kevin B. Hutchins on appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals