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**DISTRICT I/II**

June 28, 2017

To:

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Branch 40  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2517-CRNM      State of Wisconsin v. Ayla E. Titus (L.C. # 2014CF1877)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Ayla E. Titus appeals from a judgment of conviction for physical abuse of a child by recklessly causing great bodily harm and neglecting a child resulting in great bodily harm, and from an order denying her postconviction motion. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(1967). Titus received a copy of the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Titus took her eight-month-old son to the hospital where he was diagnosed with two skull fractures and large subdural hemorrhages to his brain. During a custodial interview with police, Titus admitted that on more than one occasion she may have yanked the baby up or set the baby down on the floor in a manner that caused the baby's head to snap back or bounce off the ground. At the jury trial, a medical expert explained the baby's injuries, how the injuries could result from certain conduct, and that the baby's injuries were caused over an extended period of time such that Titus would have known the baby needed medical care well before she took him to the hospital. Titus testified and admitted that she was, at times, rough with the baby. A jury found her guilty. Titus was sentenced to concurrent terms with the controlling sentence being thirty months' initial confinement and four years' extended supervision. Titus filed a postconviction motion alleging that the child's recovery and achievement of appropriate developmental milestones was a new factor supporting sentence modification. The postconviction motion was denied.

The no-merit report addresses whether the circuit court properly denied the motion to suppress Titus's custodial statement, whether there was sufficient credible evidence to support the guilty verdicts, whether the circuit court properly exercised its discretion at sentencing, whether the sentence was harsh or excessive, and whether the circuit court properly denied the postconviction motion for sentence modification. This court is satisfied that the no-merit report

properly analyzes the issues it raises as without merit, and this court will not discuss them further.

The no-merit report fails to reflect that appointed appellate counsel considered other potential issues that arise in cases tried to a jury, i.e., jury selection, evidentiary objections during trial, confirmation that the defendant's election to testify is knowingly made, use of proper jury instructions, and propriety of opening statements and closing arguments. Our review of the trial record discloses that no issues of arguable merit arise from these aspects of the jury trial.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Titus further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved from further representing Ayla E. Titus in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

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