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**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 II/IV**

July 24, 2017

*To*:

Hon. Dale L. English
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Laney D. Amons 635172
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Ana Lyn Babcock
Babcock Law, LLC
P.O. Box 22441
Green Bay, WI 54305

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

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

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2016AP955-CRNM State of Wisconsin v. Laney D. Amons (L.C. #2014CF244)

Before Lundsten, Higginbotham, and Blanchard, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Attorney Ana Babcock, appointed counsel for Laney Amons, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Counsel provided Amons with a copy of the report, he responded to it, and counsel filed

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

a supplemental no-merit report. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Amons pled no contest to one count of arson of a building. As part of the plea agreement, the State agreed to recommend a sentence of five years of initial confinement and ten to fifteen years of extended supervision. The court substantially exceeded that recommendation and imposed a sentence of twenty years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether Amons' pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Amons was waiving, and other matters. Accordingly, there is no arguable merit to a postconviction motion based on a plea colloquy defect.

In Amons' response to the no-merit report, he asserts that his trial counsel did not explain to him that he could be sentenced based on having put peoples' lives in danger. That was a factor that the court relied on heavily in sentencing. Amons notes that the elements of the crime of arson do not include endangering lives.

We analyze this issue in terms of ineffective assistance of counsel. To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To demonstrate prejudice, the defendant must show that there is a reasonable probability

that, but for counsel's unprofessional errors, the result of the proceeding would have been different. ***Id.*** at 694.

As part of showing prejudice, Amons would be required to establish that he would not have entered his no-contest plea if his trial counsel had told him that the dangers caused by his arson would be a factor for the court to consider at sentencing. We conclude that it would be frivolous for Amons to make that allegation in this case. We reach that conclusion based on the favorable plea deal he received and the strong evidence the State had available for trial, including his own statement to police and two witnesses who said Amons told them he set the fire. It would be frivolous to claim that with this additional information Amons would have rejected the plea offer.

In Amons' response to the no-merit report, he argues that errors occurred at the preliminary hearing because he was not informed that he had the right to cross-examine or call witnesses. There is no legal requirement that a defendant be told these things. And, in this case, Amons' attorney did cross-examine the State's witness. Amons also asserts that the detective was not a witness to the criminal events, but, as counsel points out in the supplemental no-merit report, hearsay evidence is permitted at a preliminary hearing. Furthermore, as counsel also correctly points out, issues from the preliminary hearing were waived by Amons' no-contest plea.

Amons also raises issues regarding sentencing. The court's sentence of twenty years of initial confinement substantially exceeded both the State's agreed-to recommendation of five years and the presentence investigation report's recommendation of six years. However, it was less than the maximum available twenty-five years.

When imposing that sentence, the court placed greatest emphasis on the seriousness of this particular arson. The court acknowledged Amons' lack of a prior criminal record and his other positive character attributes, but stated that those were reasons why the court was not imposing the maximum.

Amons asserts in his response to the no-merit report that he was not sentenced on accurate information because the court speculated that residents of other parts of the building could have been home at the time of the arson. Amons asserts that there is no evidence that they were home. However, it is not necessary that they have actually been home for it to be accurate to say that Amons potentially endangered the residents. Furthermore, whatever the actual location of residents was at that time, it does not appear that Amons had any reason to believe *at the time he committed the crime* that the building was empty.

Amons argues in his response that the sentence was excessive when compared to others convicted of arson. However, Amons does not provide information about any other specific defendant with similar facts and personal characteristics.

Amons asserts that there are "guys of different race getting way less time than me for arson." Although it is true that race would be an improper factor in sentencing, the court's statements during sentencing do not show that the court considered race.

As to whether the sentence is excessive for other reasons, the no-merit report and supplemental no-merit report have correctly summarized applicable law. The standards for the circuit court and this court on sentencing issues are well established. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In short, when we review a sentence on appeal the question is not whether this court would have imposed the same sentence, but whether

the sentencing court considered appropriate factors, did not consider improper factors, and reached a result that is within the range that a reasonable judge could reach.

In this case, although we ourselves might not have imposed the same sentence, we conclude that the sentencing court considered appropriate factors, did not consider improper factors, and reached a reasonable result. Accordingly, we conclude that there is no arguable merit to this issue.

Finally, while this appeal was pending, we received a "motion for relief pending appeal" that purported to be from Amons, but was not signed. However, even if it had been signed, the motion appeared to only ask us to grant relief allowing issues to go forward. That motion was unnecessary, because deciding that question is the purpose of our review of the record in a no-merit appeal.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the "motion for relief pending appeal" is denied.

IT IS FURTHER ORDERED that Attorney Babcock is relieved of further representation of Amons in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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