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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](http://www.wicourts.gov)

**DISTRICT III**

August 29, 2017

To:

Hon. Kendall M. Kelley  
Circuit Court Judge  
Brown County Courthouse  
100 S. Jefferson St., P.O. Box 23600  
Green Bay, WI 54305-3600

John VanderLeest  
Clerk of Circuit Court  
Brown County Courthouse  
P.O. Box 23600  
Green Bay, WI 54305-3600

Charlotte Gibson  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

David L. Lasee  
District Attorney  
P.O. Box 23600  
Green Bay, WI 54305-3600

Jefren E. Olsen  
Asst. State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

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

Timothy J. Matuszak 574210  
Oakhill Corr. Inst.  
P.O. Box 938  
Oregon, WI 53575-0938

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

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2016AP1649-CRNM     State v. Timothy J. Matuszak  
2016AP1650-CRNM     (L. C. Nos. 2015CF275, 2015CF833)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Timothy Matuszak has filed a no-merit report concluding no grounds exist to challenge Matuszak's convictions for fifth-offense operating while intoxicated, sixth-offense operating while intoxicated, and felony bail jumping. Matuszak was informed of his right to file

a response to the no-merit report and has not responded. Upon our independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup>

In February 2015, the State charged Matuszak with operating while intoxicated and operating with a prohibited alcohol concentration, both as a fifth offense. While those charges were pending, Matuszak was again arrested and charged with operating while intoxicated and operating with a prohibited alcohol concentration, both as a sixth offense; operating after revocation; and felony bail jumping. In that case, a motorist reported a reckless driver to police and, before police could locate the vehicle, it rear-ended a car that had stopped for a school bus. Although the vehicle left the scene, the reported license plate number for that vehicle was registered to Matuszak. Police responded to Matuszak's address and found him outside of his vehicle having trouble standing up.

Matuszak entered into a plea agreement that resolved both cases. Matuszak pleaded no contest to the operating while intoxicated charges in both cases and to the felony bail jumping charge from the second case. The prohibited alcohol concentration charges were dismissed outright; the operating while revoked charge was dismissed and read in; and the State agreed to cap its sentence recommendation at eighteen months' initial confinement and twenty-four months' extended supervision for each operating while intoxicated charge. The State also agreed it would seek a concurrent ninety-day jail sentence on the bail jumping offense. Out of a

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

maximum possible eighteen-year sentence, the circuit court imposed consecutive sentences totaling fourteen years, consisting of five years' initial confinement and nine years' extended supervision.

The record discloses no arguable basis for withdrawing Matuszak's no-contest pleas. The circuit court's plea colloquy, as supplemented by plea questionnaire and waiver of rights forms that Matuszak completed, informed Matuszak of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering no-contest pleas. The circuit court also informed Matuszak it was required to order "at least a \$600 fine plus costs and surcharges" in both cases. The circuit court confirmed that Matuszak understood the court was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and advised Matuszak of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). Additionally, the circuit court properly found that a sufficient factual basis existed in the records to support the conclusion that Matuszak committed the crimes charged. Matuszak personally admitted he had the four prior OWI convictions listed in the complaint in the first case, and the five prior OWI convictions listed in the complaint in the second case. The record shows the pleas were knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentences imposed. Before imposing sentences authorized by law, the circuit court considered the seriousness of the offenses; Matuszak's character, including his criminal history; the need to protect the public; and the mitigating factors Matuszak raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court concluded the offenses were aggravated because they were close in time and because the sixth-offense operating while intoxicated occurred while

Matuszak was on bond for the fifth-offense operating while intoxicated. The court further noted that although Matuszak's collision during his sixth offense was relatively minor, it could have been much worse. The court also intimated consecutive sentences were warranted because each offense involved separate illegal acts. It cannot reasonably be argued that Matuszak's sentences are so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Further, there is no arguable merit to any claim that the conditions of extended supervision were not "reasonable and appropriate" under the circumstances of this case. *See State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499.

Our independent review of the records discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Jefren E. Olsen is relieved of further representing Matuszak in these matters. *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*