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**DISTRICT II**

October 11, 2017

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

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2017AP317-CRNM      State of Wisconsin v. Mark W. Perez (L.C. # 2014CF1371)

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

**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).**

Mark W. Perez appeals from a judgment of conviction for false imprisonment and two counts of intentionally contacting a victim in violation of a court order, all with habitual offender and domestic abuse penalty enhancers. He also appeals from an order denying his

postconviction motion for sentence credit. His 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 (1967). Perez received a copy of the report, was advised of his right to file a response,<sup>2</sup> and has elected not to do so. This court's July 19, 2017 order required counsel to file a supplemental no-merit report on two potential issues. Upon consideration of counsel's reports 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.<sup>2</sup> See WIS. STAT. RULE 809.21.

On July 8, 2014, Perez went to drop off the child he has with his ex-girlfriend and entered her home without her permission. He took her cell phone and would not return it, he would not allow her to leave, and he refused her request to leave. The ex-girlfriend managed to make an audio recording of the incident in which Perez admitted to pushing her and he is heard yelling at her. The details of the July 8, 2014 incident were reported when police responded to the ex-girlfriend's house on July 25, 2014, because Perez had called her at work and threatened her. Perez was charged as a habitual offender with stalking, three counts of intentional contact with a victim in violation of a court order, burglary, disorderly conduct, false imprisonment, and felony intimidation of a victim, all as acts of domestic violence. He entered a guilty plea to three counts under a plea agreement that required the prosecution to recommend an eleven-year sentence on

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

<sup>2</sup> The supplemental no-merit report indicates that Perez does not want to seek plea withdrawal based on two potential issues raised by this court—whether a valid waiver was made of Perez's right to be present at the plea hearing and whether Perez was entitled to be advised that his guilty plea would result in multiple mandatory DNA surcharges. Because Perez does not want to pursue the issues, they could not be raised on appeal.

the false imprisonment conviction, concurrent time on the other counts, and recommend the sentences be served concurrently with the sentence imposed after revocation of probation in another case. All other counts were dismissed.

At sentencing the prosecution made the agreed upon recommendation. Perez was sentenced to three concurrent terms of two years' initial confinement and three years' extended supervision, to be served consecutive to the sentence after revocation Perez was already serving. Perez's postconviction motion for sentence credit was denied because Perez had been granted sentence credit on the sentence after revocation for the time between his arrest and the start of service of that sentence.

The no-merit report addresses the potential issues of whether Perez's plea was freely, voluntarily and knowingly entered, whether the sentence was the result of an erroneous exercise of discretion, and whether sentence credit was properly denied.<sup>3</sup> 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. We further observe that during the plea colloquy, Perez admitted his prior convictions which supported the habitual and domestic abuse penalty enhancers. Additionally, the sentences are well within the maximums and cannot be considered excessive. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the

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<sup>3</sup> Counsel indicates in the supplemental no-merit report that Perez is concerned only with the sentence credit issue. As the no-merit report explains, because the sentences in this case were ordered to be served consecutive to the sentence imposed after revocation that Perez was already serving, and Perez was given credit on the sentence after revocation for the period of time of dual custody, he was not entitled to double credit by an award of credit for the same time in this case. *State v. Jackson*, 2000 WI App 41, ¶19, 233 Wis. 2d 231, 607 N.W.2d 338.

public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.”).

The sentencing court mentioned several of the COMPAS<sup>4</sup> risk assessments within the presentence investigation report. In *State v. Loomis*, 2016 WI 68, ¶8, 371 Wis. 2d 235, 881 N.W.2d 749, the court rejected a defendant’s claim that using a COMPAS report at sentencing violates due process. However, the court in *Loomis* prohibited the COMPAS risk assessment from being used to determine whether an offender should be incarcerated, the severity of the sentence, or whether an offender can be supervised safely and effectively in the community. *Id.*, ¶98. Our review of the sentencing court’s comments leads us to conclude that there would be no arguable merit to a claim that the sentencing court’s use of the COMPAS report was improper or denied Perez due process. The sentencing court only briefly recited some of the risk assessments and then went on to examine Perez’s prior record, past failures on probation, and inability to abide by court orders in determining that Perez was not a good candidate for probation. The sentencing court then looked to other factors in determining the amount of time to impose. The sentencing court did not use COMPAS in a “determinative” manner and COMPAS assessments were one of many factors it considered.

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 Perez further in this appeal.

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<sup>4</sup> “‘COMPAS’ stands for ‘Correctional Offender Management Profiling for Alternative Sanctions.’” *State v. Loomis*, 2016 WI 68, ¶4 n.10, 371 Wis. 2d 235, 881 N.W.2d 749.

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 Leonard Kachinsky is relieved from further representing Mark W. Perez in this appeal. *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*