

reviewing the record, counsel's report, and Chavez's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Chavez was convicted following a no contest plea to theft from a person. The charge stemmed from allegations that he took a purse from a paraplegic woman in a wheelchair in 2014. The circuit court sentenced Chavez to two years of initial confinement and two years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Chavez's no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Chavez that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with the applicable jury instructions detailing the elements of the offense. We agree with counsel that a challenge to the entry of Chavez's no contest plea would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing.³ The record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197

² There is one exception to this. The circuit court failed to inform Chavez that it was not bound by the State's sentencing recommendation. This failure does not present a potentially meritorious issue for appeal, however, as the court ultimately followed the State's sentencing recommendation.

³ In the no-merit report, counsel uses the phrase "abuse of discretion." We have not used the phrase "abuse of discretion" since 1992, when our supreme court replaced the phrase with "erroneous exercise of discretion." See, e.g., *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

(citation omitted). In making its decision, the court considered the seriousness of the offense, Chavez's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the vulnerability of the victim, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court reasonably found Chavez ineligible to participate in both the Challenge Incarceration Program and the Substance Abuse Program. We agree with counsel that a challenge to Chavez's sentence would lack arguable merit.

As noted, Chavez filed a response to counsel's no-merit report. In it, he asks this court to vacate his DNA surcharge, as he had paid one before. He suggests that such a result is consistent with the circuit court's intent. We are not persuaded that Chavez's response presents an issue of arguable merit. To begin, the DNA surcharge was mandatory at the time that he committed his crime. See *State v. Scruggs*, 2017 WI 15, ¶8, 373 Wis. 2d 312, 891 N.W.2d 786. Moreover, the circuit court never evinced an intent to condition the surcharge on Chavez's not having paid one before. It simply stated, "You are responsible for all of the costs of this action, including the DNA surcharge."

Our independent review of the record does not disclose any potentially meritorious issue for appeal.⁴ Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Becky Van Dam of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Becky Van Dam is relieved of further representation of Chavez in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Shortly after the filing of the criminal complaint, Chavez requested a competency evaluation. The circuit court appointed an examiner, who opined that an inpatient evaluation was warranted due to mixed data suggestive of mental illness and/or malingering. The court then ordered an inpatient evaluation at a mental health hospital. Ultimately, that evaluation determined that Chavez was competent. A subsequent evaluation arrived at the same conclusion. Based upon the foregoing, the circuit court properly found Chavez competent.