



OFFICE OF THE CLERK  
**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**

November 28, 2017

To:

Hon. Vincent R. Biskupic  
Circuit Court Judge  
320 S. Walnut St.  
Appleton, WI 54911

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

Barb Bocik  
Clerk of Circuit Court  
Outagamie County Courthouse  
320 S. Walnut Street  
Appleton, WI 54911

David A. Newling  
534 S. Washington Street  
Waupaca, WI 54981

Jeffrey Mann  
Mann Law Office, LLC  
404 N. Main St., Ste. 102  
Oshkosh, WI 54901-4954

Joseph M. Ehmann  
State Public Defender's Office  
Appellate Division  
P.O. Box 7862  
Madison, WI 53707-7862

Melinda J. Tempelis  
District Attorney  
320 S. Walnut St.  
Appleton, WI 54911

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

---

2016AP795-CRNM      State v. David A. Newling (L. C. No. 2015CF71)

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 David Newling has filed a no-merit report concluding no grounds exist to challenge a conviction for failure to update sex offender information. Newling was advised of his right to respond and has not responded. Upon our independent review of the record 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 and summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup>

According to the criminal complaint, Newling was a sex offender who relocated and did not properly notify the Wisconsin Department of Correction (DOC) to update his current address within ten days, as required by WIS. STAT. § 301.45(4)(a). Newling was convicted after a jury trial, and the circuit court withheld sentence and imposed three years' probation with nine months' stayed jail time as a condition of probation. Shortly thereafter, Newling was again taken into custody on a probation hold for allegations of mistreatment of a child. The court approved the DOC's request to lift the stay on 120 days of the nine months' conditional jail time. Newling then sought a probation review. Following a hearing, the court lifted the stay on the entire nine months of jail time.

The no-merit report discusses whether the criminal complaint was defective on the grounds that it failed to show Newling was a person required to provide information under WIS. STAT. § 301.45. However, the charge, the defendant's name, date of offense, venue, and identity of the complainant are readily ascertainable from the criminal complaint. *See State ex rel. Evanow v. Seraphim*, 40 Wis. 2d 223, 230, 161 N.W.2d 369 (1968). In addition, Newling conceded to police that he was a sex offender who had "moved approximately two weeks ago ... and ... had not updated his information." There is no arguable issue concerning the sufficiency of the complaint.

---

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

There is also no arguable issue as to the sufficiency of the evidence. WISCONSIN STAT. § 301.45(1g) provides in part:

**(1g) WHO IS COVERED.** Except as provided in subs. (1m) and (1p), a person shall comply with the reporting requirements under this section if he or she meets one or more of the following criteria:

(a) Is convicted or adjudicated delinquent on or after December 25, 1993, for a sex offense.

The parties stipulated at trial that Newling was adjudicated delinquent of first-degree sexual assault of a child in Outagamie County case No. 1999JV443. As a collateral consequence of this adjudication, Newling was required to register as a sex offender and provide the information required under WIS. STAT. § 301.45(2)(a), which included among other things “[a]ll addresses at which the person is or will be residing.” Section 301.45(4)(a) provides that “whenever any of the information under sub. (2)(a) changes, the person shall provide the department with the updated information within 10 days after the change occurs.”

The DOC’s sex offender registration specialist Nichole Hall testified at trial that Newling’s adjudication on January 12, 2000, required sex offender registration during the period of supervision, plus an additional fifteen years. Newling’s supervision expired May 23, 2001. Newling completed a sexual offender registration form containing his signature within six days of his adjudication. Immediately above Newling’s signature was a paragraph explaining to him the responsibilities of a sex offender and informing him of the requirement to comply with those responsibilities. Hall testified that Newling acknowledged being informed of his obligation to register. Annual registration letters are sent to the registrant to verify the information. Newling received and acknowledged correspondence a minimum of twenty-five times regarding his requirements to comply with the sex offender registry.

On January 24, 2014, a confirmation letter was sent to Newling indicating he was a registered sex offender who was required to update his address within ten days following any change. Newling signed this correspondence on January 28, 2014. Hall testified that Newling also advised the DOC on January 30, 2014, that he “intends to continue to comply.” Newling received and acknowledged another registration letter in March 2014, explaining his requirements and obligations as a sex offender. Newling signed this letter on April 10, 2014. Newling signed another registration letter on May 16, 2014, acknowledging his obligation to update his information within ten days upon moving his residence.

Hall further testified that Newling moved his residence on October 8, 2014, and became non-compliant on October 18. Hall was able to contact Newling by telephone on December 9, 2014, but she was not certain where Newling was residing. Hall instructed him to “get into compliance from that point forward. [Newling] did not.” Newling’s whereabouts remained unknown to the DOC until approximately January 23, 2015. Although Newling contended at trial that he believed he was no longer required to comply with the sex offender registration, the evidence was sufficient to support a jury finding that Newling knowingly failed to provide the DOC with updated sex offender information within ten days after the change occurred.

There is also no arguable merit to any claim that the circuit court improperly exercised its sentencing discretion.<sup>2</sup> Before imposing the sentence authorized by law, the court considered the

---

<sup>2</sup> Counsel represented in the no-merit report: “In the immediate case, the trial court acted within its discretion when it placed the defendant on probation for three years and ordered, but stayed, nine months of jail as a condition of probation ....” Counsel also indicated in the statement on transcript that “[a]ll transcripts necessary for this appeal are already on file ....” However, despite counsel’s representations, our independent review revealed the record on appeal did not contain a transcript of the sentencing hearing. This court ordered counsel to make arrangements for the preparation, filing, and service of the sentencing transcript, as well as to file a supplemental statement on transcript.

proper factors, including Newling's character, the seriousness of the offense, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). It cannot be reasonably argued the sentence was excessive or overly harsh. The record also reveals no issue of arguable merit with regard to the circuit court's decision to lift the stay on the nine months of jail time imposed as a condition of probation. Finally, although the record contains some reference to the COMPAS risk assessment, it was not determinative of the sentence imposed and any challenge to the sentence based on COMPAS would also lack arguable merit. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749.

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

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Jeffrey Mann is relieved of further representing Newling in this matter.

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

---

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