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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  
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**DISTRICT III/II**

February 14, 2018

To:

Hon. Peter C. Diltz  
Circuit Court Judge  
Door County Justice Center  
1209 S. Duluth Ave.  
Sturgeon Bay, WI 54235

Connie Defere  
Clerk of Circuit Court  
Door County Justice Center  
1205 S. Duluth Ave.  
Sturgeon Bay, WI 54235

Colleen Catherine Nordin  
District Attorney  
1215 S. Duluth Ave.  
Sturgeon Bay, WI 54235

Eric R. Pangburn  
Ralph Sczygelski  
Sczygelski & Pangburn Law Firm, LLC.  
713 Washington St.  
Manitowoc, WI 54220-4525

James M. Bosman, #305957  
Waupun Corr. Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

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 opinion and order:

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2016AP28-CRNM	State of Wisconsin v. James M. Bosman (L.C. #2013CF115)
2016AP29-CRNM	State of Wisconsin v. James M. Bosman (L.C. #2014CF56)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).**

In these consolidated appeals, James Bosman appeals from a judgment in Door County circuit court case No. 2013CF115 convicting him of repeated sexual assault of a child contrary to WIS. STAT. § 948.025(1)(e) (2011-12) and child abuse contrary to § 948.03(2)(b) (2011-12). Bosman also appeals from a judgment in Door County circuit court case No. 2014CF56 convicting him of conspiracy to deliver a controlled substance contrary to WIS. STAT.

§§ 961.41(1)(b) and 939.31 (2013-14). Bosman’s appellate counsel 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). Bosman received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we modify the judgment of conviction in No. 2013CF115 and as modified, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Bosman’s guilty pleas were knowingly, voluntarily and intelligently entered and had a factual basis; and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his guilty pleas, Bosman answered questions about the pleas and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. Additionally, the plea questionnaire and waiver of rights form Bosman signed is competent evidence of knowing and voluntary pleas. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant’s understanding and knowledge at the time a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. The circuit court properly advised

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

Bosman regarding the dismissed and read-in counts. *State v. Straszkowski*, 2008 WI 65, ¶5, 310 Wis. 2d 259, 750 N.W.2d 835. The record discloses that Bosman’s guilty pleas were knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Bosman’s guilty pleas.

With regard to the sentences, the record reveals that the sentencing court’s discretionary decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Bosman to a thirty-year term for repeated sexual assault of a child and separate six-year terms for child abuse and the drug offense. All were to be served consecutively to each other and consecutively to any sentence Bosman was then serving. In fashioning the sentences, the court considered the seriousness of the offenses, Bosman’s poor character and history of other bad conduct, the need to deter Bosman and others, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight of the sentencing factors was within the circuit court’s discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. Bosman was not eligible for either the Challenge Incarceration Program or Substance Abuse Program. WIS. STAT. § 973.01(3g) and (3m). The felony sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

Our independent review of the appellate records reveals an issue relating to the DNA surcharges appearing on the judgment of conviction in Door County circuit court case

No. 2013CF115 (appeal 2016AP28-CRNM).<sup>2</sup> Bosman was convicted of three felonies. At sentencing, the circuit court imposed three \$250 DNA surcharges in the apparent belief that three surcharges were mandatory. The judgment of conviction in 2013CF115 imposes two \$250 DNA surcharges; the judgment of conviction in 2014CF56 does not impose a DNA surcharge.

In 2012 and 2013, when Bosman committed the crimes of conviction, only one DNA surcharge could have been imposed at sentencing. WIS. STAT. § 973.046(1r) (2011-12); *State v. Williams*, 2017 WI App 46, ¶22, 377 Wis. 2d 247, 900 N.W.2d 310; *review granted*, 2017 WI 94, 378 Wis. 2d 222, 904 N.W.2d 371. *State v. Radaj*, 2015 WI App 50, ¶8 n.3, 363 Wis. 2d 633, 866 N.W.2d 758. Therefore, imposing multiple DNA surcharges was an ex post facto violation. *Radaj*, 363 Wis. 2d 633, ¶¶35-36. The circuit court properly imposed one \$250 DNA surcharge in connection with the WIS. STAT. § 948.025(1)(e) conviction for repeated sexual assault of the same child because the surcharge was mandatory for that conviction. Section 973.046(1r) (2011-12). Accordingly, we vacate all but one of the \$250 DNA surcharges and modify the judgment of conviction in 2013CF115 accordingly.

In addition to the issues discussed above, we have independently reviewed the record. Other than the DNA surcharge issue, our independent review of the record did not disclose any potentially meritorious issue for appeal. 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 we affirm the judgment of conviction in Door County circuit court case No. 2014CF56. We modify the judgment of conviction in Door County circuit court case No. 2013CF115 to reflect only one

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<sup>2</sup> The no-merit report does not identify any issue relating to the DNA surcharges.

\$250 DNA surcharge, and as modified, we affirm the judgment. We remand this matter to the circuit court for the entry of an amended judgment of conviction as directed. Once the amended judgment of conviction has been entered, Attorney Ralph Sczygelski is relieved of further representation of Bosman in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court in Door County circuit court case No. 2014CF56 is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the judgment of conviction in Door County circuit court case No. 2013CF115 is modified to reflect the imposition of one \$250 DNA surcharge, and as modified, we summarily affirm the judgment pursuant to WIS. STAT. RULE 809.21. This matter is remanded to the circuit court for the entry of an amended judgment of conviction reflecting the imposition of one \$250 DNA surcharge.

IT IS FURTHER ORDERED that once the amended judgment of conviction has been entered in Door County circuit court case No. 2013CF115, Attorney Ralph Sczygelski is relieved of further representation of James Bosman in these matters.

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

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