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

DISTRICT II

April 25, 2018

To:

Hon. Peter L. Grimm
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Eric Toney
District Attorney
Fond du Lac County
160 S. Macy St.
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 S. Macy St.
Fond du Lac, WI 54935

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

Erica L. Bauer
Bauer & Farris, LLC
Zuelke Bldg., Ste. 410
103 W. College Ave.
Appleton, WI 54911

Maranatha N. Henderson 477702
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2016AP2525-CRNM State of Wisconsin v. Maranatha N. Henderson (L.C. #2015CF187)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Maranatha N. Henderson appeals from a judgment convicting him of robbery of a financial institution and misdemeanor bail jumping, and an order denying his postconviction motion for sentencing relief. Henderson's appellate counsel has filed a no-merit report pursuant

to WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Henderson received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our 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. *See* WIS. STAT. RULE 809.21.

Henderson was charged with armed robbery and robbery of a financial institution, both as a party to the crime, and with two counts of misdemeanor bail jumping. All four counts charged Henderson as a repeater (habitual criminality). Pursuant to a plea agreement, Henderson agreed to plead no contest to robbing a financial institution (count two) and misdemeanor bail jumping (count four), both as a repeater. The State moved to dismiss and read in counts two and four, as well as an uncharged incident, Fond du Lac County matter 15-5650, and three consolidated charges from Outagamie County Circuit Court case No. 2014CM1351.[2] The State also agreed to cap its initial confinement recommendation at ten years. At sentencing on count four, the circuit court imposed a bifurcated sentence totaling twenty-seven years, with twelve years' initial confinement followed by fifteen years' extended supervision. On count two, the court imposed and stayed a two-year bifurcated sentence with eighteen months' initial confinement in favor of a one-year term of consecutive probation. Based on the information in the presentence investigation report (PSI), the court found Henderson ineligible for both the Challenge Incarceration Program (CIP) and the Substance Abuse Program (SAP). Appointed

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] The disposition of the consolidated Outagamie charges was unclear at the plea hearing. At sentencing, the three Outagamie charges were consolidated into the instant case as counts five, six, and seven, and were dismissed and read in.

postconviction counsel filed a postconviction motion asserting that the PSI incorrectly stated that Henderson was statutorily ineligible for the CIP and the SAP and requesting that he be found eligible for both programs. Following a hearing, the circuit court agreed that Henderson was statutorily eligible for the early release programs but nevertheless found him ineligible based on the nature of the offense, Henderson's character and history, and the need to protect the public.

The no-merit report addresses whether Henderson's pleas were knowingly, voluntarily, and intelligently entered, whether the circuit court properly exercised its sentencing discretion, and whether the circuit court properly exercised its discretion in denying Henderson's postconviction motion seeking sentencing relief. This court is satisfied that the no-merit report correctly analyzes these issues as without arguable merit.

The trial court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1),[3] ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Henderson's signed plea questionnaire to establish his knowledge and understanding of his pleas. *See* ***State v. Hoppe***,

[3] Though the circuit court failed to provide what is commonly referred to as the "deportation warning" under WIS. STAT. § 971.08(1)(c), the no-merit report asserts and the record supports that Henderson is a United States citizen and cannot make the requisite showing for plea withdrawal under § 971.08(2).

2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). No issue of merit exists from the plea taking.[4]

The no-merit report next addresses the circuit court's exercise of its sentencing discretion. It is a well-settled principle of law that sentencing is committed to the circuit court's discretion and our review is limited to determining whether the court erroneously exercised that discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the sentencing court considered appropriate factors, did not consider improper factors, and reached a reasonable result. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76; ***State v. Grindemann***, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. Further, we cannot conclude that the twenty-seven-year bifurcated prison sentence on count two when measured against the maximum sentence of forty-six years is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguably meritorious challenge to the sentence imposed in this case.

The no-merit report also addresses the potential issue of whether the circuit court improperly denied Henderson's postconviction motion requesting eligibility for the CIP and the SAP, and concludes that any challenge to the circuit court's order denying postconviction relief would lack arguable merit. Having independently reviewed the record, we agree with appellate

[4] Henderson never actually said the phrase "no contest." However, "the only inference possible from the totality of the facts and circumstances in the record is that the defendant intended to plead no contest." ***State v. Burns***, 226 Wis. 2d 762, 764, 594 N.W.2d 799 (1999) (upholding validity of conviction "even though the defendant did not expressly and personally articulate a plea of no contest on the record in open court" where the record of the plea colloquy unequivocally demonstrated his intent to plead guilty or no contest). As in ***Burns***, the record in this case, including the plea questionnaire and Henderson's affirmative statements that he understood the charges to which he was pleading and the rights waived by a no contest plea, allow for no other inference than that Henderson intended to plead no contest.

counsel's description, analysis, and conclusion that the circuit court properly exercised its discretion in denying Henderson's postconviction motion.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment and order, and discharges appellate counsel of the obligation to further represent Henderson in this appeal. Therefore,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved from further representing Maranatha N. Henderson in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals