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**DISTRICT III**

May 15, 2018

To:

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

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2018AP80-CRNM      State of Wisconsin v. Kenneth E. Berge (L. C. No. 2016CF307)

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).**

Kenneth Berge appeals from a judgment of conviction for ten counts of possession of child pornography. 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). Berge received a copy

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

of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and our independent review of the record, we conclude that the judgment 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.

The Wisconsin Department of Justice received a tip from the National Center for Missing and Exploited Children that Berge was possibly in possession of child pornography. Berge was confronted by three plain clothes agents outside a grocery store. He agreed to speak to the agents and did so in an agent's car in the parking lot. During the conversation, Berge admitted he had accessed child pornography photos and webcams. Berge's laptop, retrieved from his car via a search warrant, contained child pornography files. Berge's motion to suppress his statements was denied. A jury found Berge guilty of all ten possession charges. Berge was sentenced to the mandatory minimum term for each count, three years' initial confinement and three years' extended supervision. The sentences were ordered to be served concurrently.

The no-merit report addresses the potential issues regarding denial of the suppression motion, the sufficiency of the evidence, and whether the sentence was the result of an erroneous exercise of discretion. 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.

The no-merit report fails to reflect that appointed appellate counsel considered other potential issues that arise in cases tried to a jury,<sup>2</sup> i.e., jury selection, evidentiary objections during trial, confirmation that the defendant's election regarding his or her own testimony is knowingly and voluntarily made, use of proper jury instructions, and propriety of opening and closing arguments. Our review of the trial record discloses no issues of arguable merit on these points. There is no basis to challenge jury selection. Evidentiary objections at trial were properly ruled on, and no potentially objectionable testimony was elicited. The trial court conducted a proper colloquy with Berge about his waiver of his right to testify. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury. The jury was polled, thus reflecting that the verdicts were unanimous.

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 Berge further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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<sup>2</sup> Counsel's no-merit report references that Berge questions the ruling on the suppression motion, believes that the verdict is not supported by the evidence, and feels the sentence is unjust. It is not enough for a no-merit report to address only issues the defendant has raised with counsel. Counsel has a duty to review the entire record for potential appellate issues. A no-merit report serves to demonstrate to the court that counsel has discharged his or her duty of representation competently and professionally and that the indigent defendant is receiving the same type and level of assistance as would a paying client under similar circumstances. *See McCoy v. Wisconsin Court of Appeals*, 486 U.S. 429, 438 (1988).

IT IS FURTHER ORDERED that attorney Daniel R. Goggin II, is relieved from further representing Kenneth E. Berge 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*