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**DISTRICT IV**

August 24, 2018

To:

Hon. John P. Roemer Jr.  
Circuit Court Judge  
Juneau County Justice Center  
200 Oak Street  
Mauston, WI 53948

Hon. Daniel G. Wood  
Circuit Court Judge  
402 Main St  
Friendship, WI 53934

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Clerk of Circuit Court  
Juneau County Justice Center  
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Darrell D. Wallace 624672  
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P.O. Box 4000  
New Lisbon, WI 53950-4000

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

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2017AP1621-CRNM	State of Wisconsin v. Darrell D. Wallace (L.C. # 2015CF116)
2017AP1622-CRNM	State of Wisconsin v. Darrell D. Wallace (L.C. # 2016CF31)
2017AP1623-CRNM	State of Wisconsin v. Darrell D. Wallace (L.C. # 2016CF48)

Before Lundsten, P.J., Sherman and Blanchard, 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).**

Attorney Katie R. York, appointed counsel for Darrell D. Wallace, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). York has since been replaced by Attorney Suzanne L. Hagopian, who, in response to this court's order, has filed a supplemental no-merit report. Wallace was sent a copy of the report, but has not filed a response. The no-merit report addresses whether there would be arguable merit to a challenge to Wallace's pleas or sentencing or the circuit court order deciding Wallace's motion for sentence modification.<sup>2</sup> Upon independently reviewing the entire record, as well as the no-merit and supplemental no-merit reports, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In August 2015, Wallace was charged with sexual exploitation of a child, child enticement, felony bail jumping, and attempted sexual intercourse with a child, all as a repeater. In February 2016, Wallace was charged with felony bail jumping. In March 2016, Wallace was charged with three counts of felony bail jumping. Pursuant to a global plea agreement, Wallace pled no contest to child enticement as a repeater as charged in the August 2015 complaint; the single count of felony bail jumping charged in the February 2016 complaint; and one count of felony bail jumping charged in the March 2016 complaint. The remaining charges in these three cases, as well as a separate case, were either dismissed outright or dismissed and read in for sentencing purposes. The court sentenced Wallace to a total of three years of initial confinement

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

<sup>2</sup> The Honorable John P. Roemer, Jr., presided over the plea and sentencing. The Honorable Daniel G. Wood issued the order denying postconviction relief.

and four years of extended supervision. Wallace moved for sentence modification, seeking a one-year reduction in his period of initial confinement, waiver of the DNA surcharges, removal of fines, and modification of his no-contact order to exclude minor family members. The circuit court granted the requests to remove the fines and modify the no-contact order, but denied the requests for sentence reduction and to waive the DNA surcharges.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Wallace's pleas. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Wallace signed, satisfied the court's mandatory duties to personally address Wallace and determine information such as Wallace's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering the pleas, and the direct consequences of the pleas.<sup>3</sup> See *State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Wallace's pleas would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Wallace's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably,

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<sup>3</sup> The circuit court failed to give Wallace the deportation warning mandated by WIS. STAT. § 971.08(1)(c). However, in response to a prior order of this court, no-merit counsel informed us that Wallace cannot show that he is subject to immigration consequences as required under § 971.08(2) to support a motion for plea withdrawal on that basis.

and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, Wallace was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Wallace’s character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Wallace to a total of three years of initial confinement and four years of extended supervision. The sentence was well within the maximum Wallace faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (quoted source omitted)). We discern no other basis to challenge the sentence imposed by the circuit court.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to the circuit court order denying Wallace’s postconviction motion for sentence modification. We agree with counsel’s analysis that any challenge to the circuit court’s decision would be wholly frivolous. The circuit court determined that, even if Wallace’s inability to obtain the treatment ordered by the sentencing court established a new factor, that new factor did not warrant sentence modification because the sentencing court imposed the minimum sentence necessary to protect the public and punish Wallace, independent of the court’s desire that Wallace obtain treatment in prison. The court also determined that, assuming the court had

discretion to waive the mandatory DNA surcharges, Wallace's argument that the surcharges were unfair and burdensome since Wallace had already provided a sample did not persuade the court that waiver of the surcharge was warranted. We agree with counsel that a challenge to the court's decision denying the requests for sentence reduction and to waive the DNA surcharges would lack arguable merit. *See State v. Harbor*, 2011 WI 28, ¶33, 333 Wis. 2d 53, 797 N.W.2d 828 (whether new factor warrants sentence modification is a matter left to the circuit court's discretion); WIS. STAT. § 973.046(1r) (providing for a mandatory DNA surcharge for each felony conviction).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction or order denying postconviction relief. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Suzanne L. Hagopian is relieved of any further representation of Darrell D. Wallace in this matter. *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*