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

September 12, 2018

To:

Hon. Robert J. Wirtz
Circuit Court Judge
Fond du Lac County Courthouse
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

Thomas Brady Aquino
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

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

Sie M. Grant
W180N8622 Town Hall Rd.
Menomonee Falls, WI 53051

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

2017AP50-CRNM State of Wisconsin v. Sie M. Grant (L.C. # 2015CF544)

Before Reilly, P.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).

Sie M. Grant appeals from a judgment of conviction for vehicle operator fleeing and eluding an officer and domestic abuse disorderly conduct, both as a repeater. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders***

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

v. California, 386 U.S. 738 (1967). Grant 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 report and an independent review of the record, the judgment is summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Grant was driving with his wife and child in the car. His wife exited the vehicle and was trying to get the child out of the car seat when Grant drove off with his wife hanging halfway out of the car. Eventually the car stopped and his wife and child exited. Grant was then pursued by a sheriff's deputy. He failed to pull over and accelerated to over 100 mph. At one point, he made a Y-turn to face the deputy's car, accelerated rapidly toward the deputy, and swerved off right before hitting the deputy's car. Grant was charged as a repeat offender with second-degree domestic abuse recklessly endangering safety, second-degree endangering safety, attempting to flee or elude an officer, and domestic abuse disorderly conduct. He entered a no contest plea to the two charges of which he is convicted, and the remaining charges were dismissed as read-ins at sentencing. On the fleeing and eluding conviction, Grant was sentenced to two years' initial confinement and one year extended supervision. A consecutive three-month jail sentence was imposed on the disorderly conduct conviction.

The no-merit report addresses the potential issues of whether Grant's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion, unduly harsh or excessive, based on inaccurate information, or otherwise subject to modification based on a new factor. 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.[2]

The no-merit report fails to discuss the circuit court's ruling on Grant's motion to suppress evidence on the ground that the vehicle stop was illegal. Although a no contest plea forfeits the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights, ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886, under WIS. STAT. § 971.31(10), a defendant may still challenge on appeal the denial of a motion to suppress evidence or a statement of a defendant. Review of an order denying a motion to suppress evidence and whether there was probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact. ***State v. Iverson***, 2015 WI 101, ¶17, 365 Wis. 2d 302, 871 N.W.2d 661. The circuit court's findings of historical fact are upheld unless they are clearly erroneous and we independently apply constitutional principles to the facts. ***Id.*** "[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops." ***State v. Houghton***, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. The circuit court found that Grant was observed speeding, failing to stop at a stop sign, and failing to pull over in

[2] Two mandatory DNA surcharges were assessed on the judgment of conviction totaling $450 and the potential for that financial obligation was not addressed during the plea colloquy. We previously placed this appeal on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument in the Wisconsin Supreme Court. This appeal was then held for a decision in ***State v. Freiboth***, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (2015AP2535). ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

response to the officer's lights and siren. These facts satisfy the probable cause requirement for the stop. No issue of arguable merit exists from the denial of the suppression motion.[3]

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 Grant 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.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved from further representing Sie M. Grant 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

[3] Grant also filed motions to suppress statements and to suppress evidence obtained as the result of an allegedly illegal arrest. At the motion hearing, Grant did not litigate the motions and they were abandoned. *See* ***State v. Woods***, 144 Wis. 2d 710, 716, 424 N.W.2d 730 (Ct. App. 1988) (motion made but not pursued is abandoned). The record shows no basis for those motions and consequently, there is no meritorious claim that trial counsel's failure to litigate them constituted ineffective assistance of trial counsel.