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 I

October 26, 2018

To:

Hon. Dennis R. Cimpl
Safety Building, Rm. 316
821 W State St. - Branch 19
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Room 114
Milwaukee, WI 53233

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

Michael S. Holzman
Rosen and Holzman
400 W. Moreland Blvd., Ste. C
Waukesha, WI 53188

Marlandez Delates McDaniel 531488
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2017AP235-CRNM State of Wisconsin v. Marlandez Delates McDaniel
(L.C.# 2015CF4587)

Before Kessler, P.J., Brennan and Dugan, 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).

Marlandez Delates McDaniel pled guilty to first-degree recklessly endangering safety and fleeing an officer. *See* WIS. STAT. §§ 941.30(1) (2015-16),[1] 346.04(3). For first-degree recklessly endangering safety, the circuit court imposed a nine-year term of imprisonment bifurcated as six years of initial confinement and three years of extended supervision. For

fleeing, the circuit court imposed a consecutive three-year term of imprisonment bifurcated as one year of initial confinement and two years of extended supervision. The circuit court found McDaniel eligible to participate in the Wisconsin substance abuse program and the challenge incarceration program after serving four years of initial confinement, and the circuit court ordered McDaniel to pay restitution in the amount of $5110.[2] He appeals.

Appellate counsel, Attorney Michael S. Holzman, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. McDaniel filed a lengthy response. Based upon our review of the record, the no-merit report, and the response, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, K.S. drove her 2003 silver Infiniti G35 coupe into a Milwaukee, Wisconsin parking lot on October 13, 2015, and began getting out of the car. A silver four-door vehicle stopped behind her, and two young African-American men got out and approached her. One of the men had a handgun and demanded her money and car keys while the second man exhorted her to hurry. K.S. also observed a third person inside the four-door

---

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

[2] The circuit court also imposed two mandatory DNA surcharges. In light of those surcharges, we previously put 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 the plea that he or she faced multiple mandatory DNA surcharges. The supreme court subsequently granted voluntary dismissal in ***Odom*** before oral argument. We then held this appeal pending a decision in ***State v. Freiboth***, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643. In ***Freiboth***, we determined that "plea hearing courts do not have a duty to inform defendants about the mandatory DNA surcharge." *See* ***id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges. We therefore lift the hold imposed in this matter and proceed to resolve the appeal.

vehicle. K.S. surrendered her car keys to the gunman, who drove her car away while the second young man re-entered the four-door vehicle and followed the gunman.

The complaint further alleged that on October 15, 2015, D.B. was at a bus stop when a person he knew as "Little Hayes" forced D.B. at gunpoint into a gray two-door Infiniti that was occupied by three young African-American men. The men drove D.B. to an alley, where "Little Hayes" ordered D.B. out of the car and took his cell phone, cash, pants, and belt. D.B. was then able to flee.

At approximately 4:52 p.m. on October 15, 2015, Officer Lawrence Pope was on patrol in a marked squad car when he saw the 2003 Infiniti G35 that K.S. had previously reported stolen. Pope observed that, due to the Infiniti's excessive speed and erratic lane changes, other drivers were required to brake abruptly to avoid a collision. Pope positioned his squad car behind the Infiniti and attempted to conduct a traffic stop by activating the squad car's lights and siren but the driver of the Infiniti ignored the signals and accelerated. Pope initiated pursuit of the Infiniti, and a second squad car operated by Officer David Martinez joined the chase.

Pope and Martinez pursued the Infiniti for more than seventeen miles through the streets and freeways of Milwaukee while the Infiniti reached speeds in excess of ninety-four miles per hour. The officers observed that the Infiniti ignored twenty traffic lights and thirty stop signs, made abrupt turns and U-turns, and drove the wrong way into oncoming traffic. The pursuit ended when the Infiniti collided with a car operated by T.N., who had lawfully entered a controlled intersection. Officers extracted McDaniel from the driver's seat of the Infiniti. Daquon Youngblood and two juvenile males, A.H., and P.A., were in the car's passenger area, where officers located a semi-automatic gun.

Youngblood told police that he, A.H., and P.A. were passengers in a four-door Pontiac that McDaniel was driving on October 13, 2015, when they saw a woman near a silver Infiniti. According to Youngblood, P.A. indicated that they were going to rob the woman. P.A. then got out of the Pontiac and took the Infiniti from the woman at gunpoint. Youngblood said that McDaniel was driving the stolen Infiniti on October 15, 2015, when the four co-actors put a fifth person into the car and drove to an alley. There, P.A. took that person's property and clothing, including the person's pants. Youngblood admitted that he was wearing the stolen pants when police attempted to stop the Infiniti.

The State charged McDaniel with two counts of armed robbery as a party to a crime, one count of first-degree recklessly endangering safety, and one count of fleeing an officer. McDaniel disputed the charges for some time but, as the trial date approached, he decided to resolve the case with a plea bargain. According to its terms, the State agreed to dismiss the two armed robbery charges outright and without prejudice, and McDaniel agreed to plead guilty as charged to the remaining charges against him. The State would recommend "substantial prison" and would not take a position on his eligibility to participate in the Wisconsin substance abuse program or the challenge incarceration program. Finally, the State agreed to dismiss and read in two misdemeanor charges that were pending against McDaniel when the charges in this case arose and further agreed not to charge him with misdemeanor bail jumping.

We first consider whether McDaniel could pursue an arguably meritorious challenge to his guilty pleas. We conclude he could not.

At the outset of the plea hearing, the State described the terms of the plea bargain. The circuit court then reviewed each component of the plea bargain with McDaniel, explaining with

particularity that dismissal of the two armed robberies without prejudice "means that in the future [the State] can reissue those cases." McDaniel told the circuit court that he understood the components of the plea bargain.

The circuit court explained to McDaniel that upon conviction for first-degree recklessly endangering safety, he faced maximum penalties of twelve and one-half years of imprisonment and a $25,000 fine. *See* WIS. STAT. §§ 941.30(1), 939.50(3)(f). McDaniel said he understood. The circuit court further explained that upon conviction for fleeing an officer, he faced maximum penalties of three and one-half years of imprisonment and a $10,000 fine. *See* WIS. STAT. §§ 346.04(3), 939.50(3)(i). McDaniel again said he understood. The circuit court advised McDaniel that it was not bound by the plea bargain and could impose consecutive sentences up to the maximums allowed by law. McDaniel said he understood. He told the circuit court that he had not been promised anything outside the terms of the plea bargain to induce his guilty pleas and that he had not been threatened.

The record contains a signed plea questionnaire and waiver of rights form with attachments. McDaniel confirmed that he had reviewed the form and attachments with his trial counsel and that he understood them. The plea questionnaire reflects that McDaniel was twenty-four years old and had a high school education. The questionnaire further reflects his understanding of the charges he faced, the rights he waived by pleading guilty, and the penalties he faced upon conviction. A signed addendum to the plea questionnaire reflects McDaniel's acknowledgment that by entering guilty pleas he would give up his right to raise defenses, to challenge the sufficiency of the complaint, and to seek suppression of the evidence against him.

The circuit court told McDaniel that by pleading guilty he would give up the constitutional rights listed on the plea questionnaire, and the circuit court reviewed those rights on the record. McDaniel said he understood his rights. The circuit court explained that if he was not a citizen, a plea other than not guilty exposed him to the risk of deportation, exclusion from admission to this country, or denial of naturalization. *See* WIS. STAT. § 971.08(1)(c). McDaniel said he understood.[3]

"[A] circuit court must establish that a defendant understands every element of the charges to which he pleads." ***State v. Brown***, 2006 WI 100, ¶58, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court may establish the defendant's requisite understanding in a variety of ways: "summarize the elements of the offenses on the record, or ask defense counsel to summarize the elements of the offenses, or refer to a prior court proceeding at which the elements were reviewed, or refer to a document signed by the defendant that includes the elements." *See* ***id.***, ¶56. Here, at the time of the guilty plea, McDaniel filed signed copies of the jury instructions describing the elements of first-degree recklessly endangering safety and fleeing an officer, and he told the circuit court that he had discussed the elements with his lawyer. As suggested by ***Brown***, the circuit court then reviewed the allegations in the complaint on the record and discussed with McDaniel how they related to the elements of the crimes. *See* ***id.*** McDaniel said he understood.

[3] The circuit court did not caution McDaniel about the risks described in WIS. STAT. § 971.08(1)(c) using the precise words required by the statute, but minor deviations from the statutory language do not undermine the validity of a plea. *See* ***State v. Mursal***, 2013 WI App 125, ¶20, 351 Wis. 2d 180, 839 N.W.2d 173. Moreover, before a defendant may seek plea withdrawal based on failure to comply with § 971.08(1)(c), the defendant must show that "the plea is likely to result in the defendant's deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2). Nothing in the record suggests that McDaniel could make such a showing.

A plea colloquy must include an inquiry sufficient to satisfy the circuit court that the defendant committed the crimes charged. *See* WIS. STAT. § 971.08(1)(b). Here, trial counsel stipulated to the facts stated in the criminal complaint insofar as they related to the crimes of first-degree recklessly endangering safety and fleeing an officer. *See* ***State v. Black***, 2001 WI 31, ¶13, 242 Wis. 2d 126, 624 N.W.2d 363 (factual basis established when trial counsel stipulates on the record to the facts in the criminal complaint). The circuit court properly established a factual basis for McDaniel's guilty pleas.

The record reflects that McDaniel entered his guilty pleas knowingly, intelligently, and voluntarily. *See* WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The record reflects no basis for an arguably meritorious challenge to the validity of the pleas.

We next consider an issue that McDaniel raised in his response to the no-merit report, namely, that his trial counsel was ineffective during the plea bargaining process. A defendant who claims that trial counsel was ineffective must show that counsel's performance was deficient and that the deficiency prejudiced the defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To demonstrate deficient performance, the defendant must show specific acts or omissions of counsel that are "outside the wide range of professionally competent assistance." ***Id.*** at 690. To demonstrate prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. If a defendant fails to satisfy one prong of the analysis, the court need not address the other. *See* ***id.*** at 697.

McDaniel advises that he rejected the State's first offer to resolve the case, and his trial counsel persuaded the State to make a second offer. According to McDaniel, he accepted the second offer after trial counsel advised him that the prosecutor "wasn't going to go down." McDaniel states, however, that he "feel[s] trial counsel could have negotiated a better plea." "'[A] defendant who alleges that counsel was ineffective by failing to take certain steps must show with specificity what the actions, if taken, would have revealed and how they would have altered the outcome of the proceeding.'" ***State v. Provo***, 2004 WI App 97, ¶15, 272 Wis. 2d 837, 681 N.W.2d 272 (citation omitted). Nothing in the record and nothing in McDaniel's submission suggests that McDaniel could identify specific steps that his trial counsel could have taken that would have persuaded the State to offer him a better plea bargain than the one he accepted. We observe that the plea bargain in this case included the State's agreement to dismiss numerous charges against McDaniel and that he ultimately pled guilty to two crimes that he committed in plain view of two police officers. By his own admission, his trial counsel explained to him that the State would not make a more favorable offer under the circumstances. Further pursuit of this issue would lack arguable merit.

We next consider whether McDaniel could pursue an arguably meritorious challenge to the restitution order. Our review of the record discloses that at sentencing McDaniel stipulated to the amount of restitution ordered. *See* WIS. STAT. § 973.20(13)(c). Therefore, he could not mount an arguably meritorious challenge to the order. *See* ***State v. Leighton***, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126.

We next consider whether McDaniel could pursue an arguably meritorious challenge to his sentences. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion. ***State v. Gallion***, 2004 WI

42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

The circuit court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, 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 circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See* ***id.*** The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. ***Stenzel***, 276 Wis. 2d 224, ¶16.

We agree with appellate counsel's conclusion that the record here reflects an appropriate exercise of sentencing discretion. The circuit court indicated that the primary goals of its sentences were punishment, deterrence, and rehabilitation, and the circuit court discussed the factors it deemed relevant to those goals.

The circuit court determined that the offenses were serious, finding that McDaniel engaged in reckless driving at a time of day when many people are on the road returning home from jobs and school. The circuit court also noted a number of aggravating factors, including that McDaniel did not have a driver's license and that he was out of custody after posting bail in

another matter at the time he committed the crimes in this case. The circuit court considered numerous aspects of McDaniel's character, acknowledging that he had completed high school, obtained employment, had expressed remorse for his actions, and had accepted responsibility. The circuit court also recognized that McDaniel's age might warrant excusing some of the impulsive behavior he displayed while committing the crimes in this case, but the circuit court concluded that, even granting some youthful struggles with impulse control, McDaniel should have realized long before the end of a seventeen-mile chase that he should comply with officers' signals to stop his car. The circuit court also noted with concern that McDaniel had been adjudicated delinquent on several occasions, had served time in a juvenile detention facility, and had previously been placed on probation. *Cf.* ***State v. Fisher***, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (significant criminal history is indicative of character). The circuit court considered the need to protect the public, emphasizing the risk that McDaniel posed to those on the road and in the car with him while he fled from police at excessive speeds.

The circuit court identified proper and relevant factors in choosing sentences in this matter. Further, the penalties imposed are within the maximums allowed by law and cannot be considered unduly harsh or excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We are satisfied that McDaniel cannot mount an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. McDaniel nonetheless raises a host of complaints about his sentencing. We turn to his concerns.

McDaniel first complains that the circuit court did not give reasons either for imposing the "near maximum" term of initial confinement for first-degree recklessly endangering safety or for imposing consecutive sentences. We cannot agree. Our obligation is to "review the sentencing transcript as a whole," *see* ***State v. Betters***, 2013 WI App 85, ¶15, 349 Wis. 2d 428,

835 N.W.2d 249, and, as discussed above, that transcript reflects the reasons why, in the circuit court's view, the crimes at issue and McDaniel's history necessitated the aggregate term of imprisonment selected in this case. McDaniel's contention that the circuit court did not adequately explain the sentences is a demand for mathematical precision in the sentencing decision. The exercise of sentencing discretion, however, "does not lend itself to mathematical precision." *See* ***Gallion***, 270 Wis. 2d 535, ¶49. Therefore, the circuit court is not required to explain "the precise number of years chosen," *see* ***State v. Taylor***, 2006 WI 22, ¶30, 289 Wis. 2d 34, 710 N.W.2d 466, but rather must provide "an explanation for the general range of the sentence imposed," *see* ***Gallion***, 270 Wis. 2d 535, ¶49. The circuit court did so here.

McDaniel next complains that the sentencing remarks have an "appearance of bias." He directs our attention to the circuit court's reference to a Milwaukee Police Department policy authorizing vehicle pursuits only in limited circumstances and the circuit court's lamentation that "all you guys driving stolen cars know that they can't pursue you."[4] The circuit court went on to describe its familiarity with cases in which police had been able to solve car thefts only because "guys like you are stupid enough to leave your fingerprints on the rearview mirror." In McDaniel's view, the circuit court "referred to [him] as stupid," and he reminds us that he was caught red-handed inside a stolen car, not discovered through fingerprint analysis. McDaniel shows no bias in the circuit court's remarks. "Whether a judge was objectively not impartial is a

[4] At the time of the offense in this case, vehicle pursuits were governed by MILWAUKEE POLICE DEPT. GEN. ORDER 2010-12, *eff.* Mar. 26, 2010, available at https://www.milwaukee.gov/ImageLibrary/Groups/mpdAuthors/NewsReleases/2010/MPD_Pursuit_Policy_Roll_Call_Version.032610.pdf (last visited Oct. 26, 2018). The policy has since been amended. *See* MILWAUKEE POLICE DEPT. GEN. ORDER 2017-50, *eff.* Sept. 22, 2017, available at https://city.milwaukee.gov/ImageLibrary/Groups/mpdAuthors/SOP/660-vehiclepursuitsandemergencyvehicleoperations.pdf (last visited Oct. 26, 2018).

question of law." ***State v. Pirtle***, 2011 WI App 89, ¶34, 334 Wis. 2d 211, 799 N.W.2d 492. The question turns on whether the "'judge in fact treated [the defendant] unfairly.'" *See* ***State v. McBride***, 187 Wis. 2d 409, 416, 523 N.W.2d 106 (Ct. App. 1994) (citation omitted). Negative remarks and intemperate language are not sufficient to show bias. *See* ***Pirtle***, 334 Wis. 2d 211, ¶¶9, 34-35 (no bias where circuit court referred to defendant as "a piece of garbage"). The remarks that McDaniel complains of here reflect the circuit court's frustration with aspects of the criminal justice system, but the remarks did not directly disparage McDaniel, and they do not support an arguably meritorious claim that the circuit court treated him unfairly.

McDaniel complains next that the circuit court erroneously exercised its discretion by stating that McDaniel's actions could have seriously hurt or injured someone. He believes that such statements were "inconsistent with the facts of the offenses to which [he] pled guilty" because "no one was seriously hurt nor was anybody killed." The contentions lack arguable merit. One element of first-degree recklessly endangering safety is that "[t]he defendant endangered the safety of another by criminally reckless conduct." *See* WIS JI—CRIMINAL 1345. Further, as correctly reflected on the copy of WIS JI—CRIMINAL 1345 that McDaniel signed and filed at the time of his guilty pleas, "'[c]riminally reckless conduct' means the conduct created a risk of death or great bodily harm to another person; and the risk of death or great bodily harm was unreasonable and substantial." *See* ***id.*** (some punctuation omitted). McDaniel's suggestion that the sentencing court acted improperly by considering how the facts of his case proved the elements of his crime is frivolous within the meaning of ***Anders***.

Next, McDaniel asserts that the sentencing court erroneously stated: (1) that McDaniel was placed in juvenile detention at Lincoln Hills School in 2009 when, in fact, he was placed at Ethan Allen School in 2008; and (2) that the judge personally tried to help McDaniel during the

five-year period in which he was involved in the juvenile justice system. A person has a due process right to be sentenced on the basis of accurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. McDaniel's trial counsel did not object to the alleged errors, however, so we consider any possible postconviction challenge in an ineffective-assistance-of-counsel context. *See* ***State v. Carprue***, 2004 WI 111, ¶ 47, 274 Wis. 2d 656, 683 N.W.2d 31 (explaining that in the absence of an objection, we address issues under the ineffective-assistance-of-counsel rubric). McDaniel could not, as a matter of law, make the two-prong showing required by ***Strickland*** to prevail on a challenge to the effectiveness of his trial counsel.

The prosecutor advised the circuit court early in the sentencing proceeding that in July 2008, McDaniel was placed "for roughly eleven months" at Ethan Allen School, a juvenile correctional facility, and that he was released because he reached the age of eighteen years on July 4, 2009. The circuit court's subsequent misstatement that McDaniel went to Lincoln Hills School in 2008 is a *de minimis* error, and there is no arguable merit to a claim that the error prejudiced him at sentencing.[5] As to McDaniel's complaint that the circuit court said it tried to help him for five years, we have already noted our obligation to review the sentencing transcript as a whole. *See* ***Betters***, 349 Wis. 2d 428, ¶15. Here, the circuit court found that McDaniel had received a variety of services as a juvenile offender and observed that "we tried at Children's Court." The transcript in its entirety reflects that the circuit court's later statement about

[5] We observe that Ethan Allen School closed in 2011 and youth placed there were transferred to Lincoln Hills School. *See* Division of Juvenile Corr., 2014 Annual Report pg. 2 n.1 (Mar. 2015) (available at https://doc.wi.gov/Documents/AboutDOC/JuvenileCorrections/DJCAnnualReport2014.pdf) (last visited Oct. 26, 2018).

"tr[ying] to help" McDaniel referred to help offered by the juvenile justice system generally, not by the sentencing court personally.

McDaniel also alleges that his trial counsel was ineffective at sentencing. Our review of the record does not support the claim. According to McDaniel, his trial counsel should have objected during the sentencing proceeding when, in McDaniel's view, the prosecutor erroneously described the precise time at which Youngblood gave a statement to police and erroneously advised the circuit court that P.A. possessed the gun that officers found in the Infiniti when they arrested McDaniel. McDaniel also faults his trial counsel for failing to object when the prosecutor described McDaniel's co-actor in a 2009 case as a "known high-value target ... involving carjackings and robberies." That description was objectionable, McDaniel says, because the co-actor is currently in prison for felony murder. Notwithstanding McDaniel's complaints, the record does not show that the prosecutor erroneously described the actions and misdeeds of Youngblood, P.A., or any other third party. Nor does the record suggest that McDaniel was prejudiced even assuming the descriptions of some third parties' actions were wrong in some way. Further pursuit of this issue would lack arguable merit.

McDaniel next faults his trial counsel for failing to object when the circuit court said it assumed that the police had permission to pursue him. According to McDaniel, the record does not reflect that police had obtained such permission, and the circuit court's assumption was "unduly prejudicial because it created a risk that invited an irrational emotional response." The claim lacks arguable merit. As we have seen, the circuit court exercised proper sentencing

discretion and did not exhibit any bias against McDaniel. Accordingly, he was not prejudiced by the circuit court's assumption that the police commenced a lawful vehicular pursuit.[6]

We have attempted to address the issues that McDaniel identifies as possible grounds for further postconviction or appellate proceedings. To the extent we may not have specifically addressed some nuance of a claim, it is sufficient to observe that our review of the record discloses no meritorious issues for appeal. *See* ***State v. Foster***, 2014 WI 131, ¶63, 360 Wis. 2d 12, 856 N.W.2d 847. Accordingly, we accept the no-merit report, affirm the convictions, and discharge appellate counsel of the obligation to represent McDaniel further in this appeal.

IT IS ORDERED that the hold previously imposed in this matter is lifted.

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

IT IS FURTHER ORDERED that appellate counsel, Attorney Michael S. Holzman, is

[6] For the sake of completeness, we observe that the record shows the police acted within the scope of the policy then in place governing pursuit of fleeing vehicles. *See* MILWAUKEE POLICE DEPT. GEN. ORDER 2010-12. The policy authorized a vehicle pursuit when an officer "knows or has probable cause to believe: (1) the occupant(s) has committed ... a violent felony (i.e., armed robbery, recklessly endanger safety) ... or (2) the occupant(s) presents a clear and immediate threat to the safety of others and therefore the necessity of immediate apprehension outweighs the level of danger created by the vehicle pursuit." *See* KRISTIN KAPPELMAN, FIRE AND POLICE COMM'N, ANALYSIS OF MARCH 26, 2010 MPD VEHICLE PURSUIT POLICY REVISION at 3 (Nov. 15, 2010), available at https://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Reports/Analysisof032610PursuitPolicy.pdf (last visited Aug. 16, 2018). The criminal complaint in this case reflects that both conditions for pursuit were satisfied. A police officer—Pope—recognized the Infiniti as the car K.S. had reported stolen during an armed robbery, and the pursuit began when Pope observed that the Infiniti was engaged in erratic and dangerous driving that presented an immediate threat to others on the road.

relieved of any further representation of Marlandez Delates McDaniel on 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