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110 EAST MAIN STREET, SUITE 215  
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MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT IV/I**

November 7, 2018

To:

Hon. Lynn M. Rider  
Circuit Court Judge  
220 N. Beaumont St.  
Prairie du Chien, WI 53821

Donna M. Steiner  
Clerk of Circuit Court  
Crawford County Courthouse  
220 N. Beaumont Street  
Prairie du Chien, WI 53821

Timothy C. Baxter  
District Attorney  
220 N. Beaumont Rd.  
Prairie du Chien, WI 53821-1405

Andrew Hinkel  
Assistant State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

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

Ian Phillip Thiel 619402  
Supervised Living Facility  
1500 Lessard St.  
Prairie du Chien, WI 53821

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

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2018AP293-CRNM      State of Wisconsin v. Ian Phillip Thiel (L.C. # 2017CF35)

Before Brennan, Brash 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).**

Ian Phillip Thiel pled no contest on July 17, 2017, to one count of burglary of a dwelling. He faced maximum penalties of twelve and a half years of imprisonment and a \$25,000 fine. *See* WIS. STAT. §§ 943.10(1m)(a) (2015-16),<sup>1</sup> 939.50(3)(f). The circuit court imposed a five-year

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

term of imprisonment bifurcated as two years of initial confinement and three years of extended supervision. He appeals.

Appellate counsel, Attorney Andrew Hinkel, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Thiel did not file a response. Based upon our independent review of the no-merit report and the record, 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, M.Z. contacted the Crawford County Sheriff's Department on April 7, 2017. He alleged that someone had forcibly entered his residence in Prairie du Chien, Wisconsin, and stolen numerous items. An investigation followed, and law enforcement officers found some of the items reported stolen at a pawn shop. The pawn shop's records showed that Thiel had pawned the items. Law enforcement officers then went to the home that Thiel shared with his mother. There, the officers spoke with Thiel's mother and showed her a list of items that M.Z. had reported stolen. She told them that some of the listed items were in her home. The officers also observed some of the stolen items in plain view. The officers next obtained a search warrant for the home. In Thiel's bedroom, they found many additional items that M.Z. had reported stolen. On April 26, 2017, the State charged Thiel with burglary.

Thiel quickly decided to resolve the case with a plea bargain. He agreed to enter a no-contest plea to the pending charge of burglary, and the State agreed not to charge him with any

additional crimes in connection with the offense.<sup>2</sup> The State also agreed to request a presentence investigation. The State offered no other concessions.

The circuit court accepted Thiel's no-contest plea and ordered a presentence investigation. The matter thereafter proceeded to sentencing. The State recommended an evenly bifurcated eight-year term of imprisonment, and Thiel recommended probation with time in jail as a condition. The author of the presentence investigation report recommended one year of initial confinement and two years of extended supervision. After discussing the various recommendations and numerous sentencing considerations, the circuit court imposed a five-year term of imprisonment bifurcated as two years of initial confinement and three years of extended supervision. The circuit court awarded Thiel the seven days of sentence credit he requested, and the circuit court ordered him to pay \$3249.16 in restitution. The circuit court also found him ineligible for the challenge incarceration program and the Wisconsin substance abuse program.

Shortly after sentencing, Thiel moved the circuit court to declare him eligible for the Wisconsin substance abuse program. The circuit court granted the requested relief.

In the no-merit report, appellate counsel addresses whether Thiel entered his no-contest plea knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. We are satisfied that appellate counsel properly analyzes these issues, and we agree with appellate counsel that further pursuit of these issues would lack arguable merit. We will not discuss them further.

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<sup>2</sup> The record shows that the State believed it could have charged Thiel with a second count of burglary, criminal damage to property, and theft of a firearm.

Appellate counsel does not address whether Thiel could pursue an arguably meritorious challenge to the order for restitution. We conclude he could not. The presentence investigation report included information that M.Z. sought restitution in the amount of \$3249.16. Thiel advised the circuit court that he had reviewed the report, and he did not state any objection to the amount of restitution requested. During his sentencing allocution, he said that he wanted to “pay this restitution” and “make it right.” A defendant who does not voice an objection to the amount of restitution described in a presentence investigation report constructively stipulates to the amount described. *See State v. Szarkowitz*, 157 Wis. 2d 740, 749, 460 N.W.2d 819 (Ct. App. 1990). A challenge to the restitution order would be frivolous.

We also conclude that Thiel could not pursue an arguably meritorious motion to be found eligible to participate in the challenge incarceration program. The record is uncontroverted that Thiel was forty-two years old on the date of sentencing, and a person is statutorily disqualified from participating in the challenge incarceration program if the person has attained the age of forty years before his or her participation would begin. *See* WIS. STAT. § 302.045(2)(b).

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Andrew Hinkel is relieved of any further representation of Ian Phillip Thiel on 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*