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

2018AP915-CRNM State of Wisconsin v. Jovica A. Stefanovic (L.C. # 2017CM715)

Before Brash, J.¹

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).

Jovica A. Stefanovic appeals a judgment of conviction entered upon his no-contest plea to one misdemeanor count of retail theft of merchandise with a value that does not exceed \$500.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

See WIS. STAT. § 943.50(1m)(b), (4)(a). The circuit court imposed a \$100 fine along with mandatory court costs and surcharges.

Stefanovic's appellate counsel, Attorney Katherine Seifert, filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). The no-merit report included Attorney Seifert's certification, pursuant to RULE 809.32(1)(c), that she discussed with Stefanovic the issues that she raised in the no-merit report and that she explained his options, including his right to file a response to the no-merit report. We did not receive a response from Stefanovic. We have considered the no-merit report and conducted an independent review of the record.² We conclude that no arguably meritorious issues exist for an appeal. We summarily affirm. See WIS. STAT. RULE 809.21.

In a criminal complaint, the State alleged that on March 30, 2017, Stefanovic took but did not pay for two bricks of cheese, four bottles of soda, and a quart of motor oil held for resale by a Walmart store in Marathon County, Wisconsin. The total value of the items was \$19.61. The State charged Stefanovic with one count of retail theft for which he faced maximum penalties of nine months in jail and a \$10,000 fine. See WIS. STAT. §§ 943.50(1m)(b), (4)(a), 939.51(3)(a). Stefanovic decided to resolve the case short of trial. Pursuant to a plea bargain, Stefanovic pled

² A defendant has the right to respond to a no-merit report within thirty days after service of the no-merit report. See WIS. STAT. RULE 809.32(1)(e). A defendant also has an obligation to cooperate with his or her lawyer. See *McClelland v. State*, 84 Wis. 2d 145, 152, 267 N.W.2d 843 (1978). Here, Attorney Seifert has advised the court that the copy of the no-merit report she mailed to Stefanovic in July 2018 at his last known address was returned to her as undeliverable, he has not provided her with an updated address, and his telephone number is no longer in service. It thus appears that Stefanovic has failed to keep Attorney Seifert apprised of his whereabouts, and consequently she has not been able to serve him with a copy of the no-merit report to which he has the right to respond. Nonetheless, we conducted a review of the record and considered the arguable merits of an appeal. Cf. *State v. Allen*, 2010 WI 89, ¶¶39, 58, 328 Wis. 2d 1, 786 N.W.2d 124 (appellant in a no-merit proceeding need not respond to a no-merit report in order to obtain review by this court).

no contest to the charge against him, and the parties jointly recommended that the circuit court impose a \$100 fine as a penalty, along with court costs and surcharges. The circuit court accepted Stefanovic's no-contest plea and followed the parties' joint sentencing recommendation.

In the no-merit report, appellate counsel first examines whether Stefanovic entered his no-contest plea knowingly, intelligently, and voluntarily, and whether the State complied with the terms of the plea bargain. This court is satisfied that appellate counsel properly analyzed those issues, and we agree with appellate counsel that further pursuit of those issues would lack arguable merit. Additional discussion of these matters is not warranted.

Appellate counsel next examines the sentence that Stefanovic received and concludes that he could not mount an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. We agree. Although the circuit court's sentencing remarks were brief, they reflect that the circuit court based the sentence on the nature of the offense, Stefanovic's nominal prior record, and the unfortunate personal circumstances and financial straits that evidently motivated him to commit retail theft. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695 (court must consider primary sentencing factors of the gravity of the offense, the offender's character, and the public's need for protection, and may also consider a variety of other factors concerning the offender, the crime, and the community). Moreover, the circuit court imposed the sentence that Stefanovic requested. Accordingly, we are satisfied that a challenge to the sentence would lack arguable merit. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (defendant may not challenge on appeal a sentence that he or she affirmatively approved).

Last, we consider appellate counsel’s conclusion that the judgment of conviction accurately reflects the disposition. We observe that the judgment of conviction correctly shows that the circuit court imposed a fine but does not separately state the amount of that fine. Instead, the judgment includes an “obligation summary” that reflects a “fine and forfeiture” amount of \$146.00. As shown on the circuit court’s assessment report, the “fine and forfeiture” amount of \$146.00 reflects a \$100 fine, a twenty-six percent penalty surcharge (required pursuant to WIS. STAT. § 757.05), a \$10 drug offender diversion surcharge (required pursuant to WIS. STAT. § 973.043), and a \$10 jail surcharge (required pursuant to WIS. STAT. § 302.46(1)). Accordingly, we agree with appellate counsel that the judgment of conviction accurately reflects the disposition.

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 Katherine Seifert is relieved of any further representation of Jovica A. Stefanovic 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