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December 18, 2018

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

2017AP1972-CRNM State of Wisconsin v. Keith Christopher James Landrith
(L. C. No. 2015CF434)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Keith Landrith filed a no-merit report concluding no grounds exist to challenge Landrith's convictions for two counts of identity theft for financial gain, contrary to WIS. STAT. § 943.201(2)(a) (2015-16).¹ The no-merit report also concluded any challenge to that part of the postconviction order denying Landrith additional sentence credit would lack arguable merit. Landrith was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction and the postconviction order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Landrith with two counts of identity theft for financial gain and one count of theft by acquisition of a credit card. An amended complaint alleged that police responded to a reported shoplifting, identified Landrith, and arrested him based on outstanding warrants. When performing a search of Landrith's person incident to his arrest, police found checks, identification documents, and credit and debit cards belonging to other people. Three individuals responded to police inquiries confirming they had not given Landrith permission to possess their property. In exchange for Landrith's guilty pleas to the two counts of identity theft for financial gain, the State agreed to dismiss the remaining charge outright. Both parties remained free to argue at sentencing, following completion of a presentence investigation report. Out of a maximum possible twelve-year sentence, the circuit court imposed consecutive sentences resulting in four years' initial confinement followed by four years' extended

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

supervision, to run consecutive to any other sentence Landrith was then serving. Landrith also received 128 days of sentence credit.

Landrith filed a postconviction motion seeking an additional 39 days of sentence credit, for a total of 167 days, representing credit for: (1) days spent in custody for an overlapping misdemeanor case arising from Douglas County; (2) good time that was not credited in the misdemeanor case; and (3) time spent in custody from the date of Landrith's Minnesota arrest (after he absconded from Wisconsin) until his sentence in the present case. The State argued, and the circuit court agreed, that Landrith's requests for credit arising from the misdemeanor case breached the plea agreement for time served in that case. Removing any request for credit that could compromise his plea agreement in the misdemeanor case, Landrith asserted he was still entitled to a total of 142 days of credit.² As Landrith had originally been granted 128 days of sentence credit, the circuit court granted 14 additional days of sentence credit, resulting in a total of 142 days.

The no-merit report addresses whether Landrith knowingly, intelligently and voluntarily entered his guilty pleas; whether the circuit court properly exercised its sentencing discretion; and whether Landrith received the appropriate amount of sentence credit. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to Landrith's pleas or sentences—including any claim that Landrith is entitled to additional sentence credit—would lack arguable merit. Moreover, a supplemental no-merit report notified

² The 142 days sought consisted of 77 days Landrith spent in custody from the day after his sentencing in the misdemeanor case to the day he was released on bond in the present matter, and the 65 days from his arrest in Minnesota to his sentencing in this case.

this court that, in addition to agreeing that any request for additional sentence credit in the misdemeanor case would be inconsistent with Landrith's plea agreement in that case, Landrith "waives any right to pursue additional sentence credit." Our independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorneys Alisha McKay and Andrew R. Hinkel are relieved of their obligations to further represent Landrith in this matter. *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