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**DISTRICT I**

January 2, 2019

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

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2017AP1614-CRNM      State of Wisconsin v. A'Kim Mack (L.C. # 2007CF384)

Before Kessler, P.J., Brennan and Brash, 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).**

A'Kim Mack appeals from a judgment of conviction for one count of second-degree reckless homicide, contrary to WIS. STAT. § 940.06(1) (2007-08).<sup>1</sup> He also appeals from orders denying his postconviction motion and supplemental postconviction motion. Mack's appellate counsel, Pamela Moorshead, has filed a no-merit report pursuant to *Anders v. California*, 386

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

U.S. 738 (1967) and WIS. STAT. RULE 809.32. Mack has not filed a response. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

Mack was charged with first-degree intentional homicide while armed in connection with the shooting death of Leighann J. Bell. In March 2008, he entered a plea agreement with the State pursuant to which he entered an *Alford* plea to second-degree reckless homicide.<sup>2</sup> Under the terms of the agreement, which were memorialized in an eight-page written plea agreement, both sides were free to argue for an appropriate sentence. The trial court conducted a plea colloquy with Mack, accepted his *Alford* plea, and found him guilty. The trial court later followed the State's recommendation and imposed the maximum potential sentence: fifteen years of initial confinement and ten years of extended supervision, consecutive to any other sentence.

Mack did not immediately pursue a direct appeal. In 2015, this court extended the deadline for Mack to file a notice of intent to pursue postconviction relief under WIS. STAT. RULE 809.30(2)(b). Represented by counsel, Mack filed a postconviction motion and a supplemental motion seeking to withdraw his *Alford* plea on grounds that his plea was not knowingly and voluntarily entered because "Mack was led to believe that the State would be recommending" that he serve six to eight years of initial confinement. The trial court denied the motions without holding a hearing.

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<sup>2</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Mack appealed. While briefing was underway, appellate counsel learned that the presentence investigation (PSI) report, which she had previously been told was missing, was in the appellate record. Counsel reviewed the PSI report and, after consulting with Mack, moved this court to convert the merit appeal to a no-merit appeal. We granted the motion. The no-merit report notes that the PSI report explicitly stated that Mack told the PSI writer “that the District Attorney’s Office would be recommending 15 years in prison followed by 10 years of extended supervision, but [Mack] was hoping for 10 years in prison followed by 15 years of extended supervision.” The no-merit report states: “Given that new information, undersigned counsel cannot argue that Mr. Mack is entitled to a hearing on [his postconviction] motion, since this is a case in which the record conclusively establishes that Mr. Mack is not entitled to relief.” Having reviewed the PSI report, the plea hearing and sentencing transcripts, and the written plea documents, we agree with counsel’s assessment that there would be no arguable merit to pursue an appeal of the denial of Mack’s postconviction motion and supplemental postconviction motion.

In addition to explaining the procedural history of the case and counsel’s assessment that there would be no arguable merit to challenging the denial of the postconviction motion, the no-merit report addresses three additional issues: (1) whether Mack’s *Alford* plea was intelligently, knowingly, and voluntarily entered; (2) whether there was a factual basis for the plea; and (3) whether the trial court erroneously exercised its sentencing discretion. The no-merit report thoroughly addresses each of those issues, providing citations to the record and relevant authority. For example, with respect to Mack’s plea, the no-merit report analyzes the trial court’s compliance with WIS. STAT. § 971.08; *State v. Brown*, 2006 WI 100, 293 Wis. 2d 594, 716 N.W. 2d 906; and *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), discussing issues such as the trial court’s explanation of the elements of the crime and the fact that Mack

was giving up certain constitutional rights. With respect to the factual basis for the plea, the no-merit report discusses the requirements for establishing a factual basis when an *Alford* plea is accepted. The no-merit report concludes that the trial court “made the required finding of strong evidence of guilt,” which was supported by a witness’s testimony at the preliminary hearing. Finally, the no-merit report addresses the sentence imposed, providing citations to the sentencing transcript and analyzing the trial court’s compliance with *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.

This court is satisfied that the no-merit report properly analyzes the issues it raises, and based on our independent review of the record, we agree with counsel’s assessment that none of those issues presents an issue of arguable merit.

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 Mack further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved from further representing A’Kim Mack in this 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*