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**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](http://www.wicourts.gov)

**DISTRICT II**

January 9, 2019

To:

Hon. Bruce E. Schroeder  
Circuit Court Judge  
Kenosha County Courthouse  
912 56th Street  
Kenosha, WI 53140

Michael D. Graveley  
District Attorney  
912 56th Street  
Kenosha, WI 53140-3747

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
912 56th Street  
Kenosha, WI 53140

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

Carl W. Chesshir  
Chesshir Law Office  
S101 W34417 Hwy LO, Ste. B  
Eagle, WI 53119

William R. Powers 204695  
Jackson Correctional Inst.  
P.O. Box 233  
Black River Falls, WI 54615-0233

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

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|                 |   |
|-----------------|---|
| 2018AP1072-CRNM | State of Wisconsin v. William R. Powers (L.C. #2017CM288) |
| 2018AP1073-CRNM | State of Wisconsin v. William R. Powers (L.C. #2017CF708) |

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

**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).**

In these consolidated cases, William R. Powers appeals from judgments convicting him of retail theft and operating a motor vehicle while intoxicated as a sixth offense. Powers'

appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Powers received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the records and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. WIS. STAT. RULE 809.21.

Powers was convicted following guilty pleas to retail theft and operating while intoxicated as a sixth offense. The charges stemmed from two separate incidents that were resolved together in the circuit court. The court imposed an aggregate sentence of twenty-one months of initial confinement and three years of extended supervision. It also ordered a fine of \$1200. These no-merit appeals follow.

The no-merit report addresses whether Powers' guilty pleas were knowingly, voluntarily, and intelligently entered. The records show that the circuit court engaged in a colloquy with Powers that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.<sup>2</sup> In addition, a signed plea questionnaire and waiver of rights form was entered into the records, along with attachments detailing the elements of the offenses. We agree with counsel that a challenge to the entry of Powers' guilty pleas would lack arguable merit.

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

The circuit court neglected to mention the minimum term of imprisonment (six months) for the operating while intoxicated charge. This omission does not present an issue of arguable merit, however, as the information is included in the signed plea questionnaire and waiver of rights form, which Powers acknowledged he had read and understood.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The records reveal that the court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). Moreover, Powers’ ability to challenge the period of initial confinement imposed is limited by the fact that his counsel requested it. See *State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (defendants may not attack their sentence on appeal when the circuit court imposes the sentence requested by them). We agree with counsel that a challenge to Powers’ sentence would lack arguable merit.

Our independent review of the records does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Carl W. Chesshir of further representation in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of further representation of Powers in these matters.

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*