



OFFICE OF THE CLERK  
**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 30, 2019

To:

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

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

Marcella De Peters  
Law Office of Marcella De Peters  
PMB #318  
6650 W. State St.  
Wauwatosa, WI 53213

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

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

Gerald J. Jenkins, #473041  
Marshall Sherrer Corr. Center  
1318 N. 14th Street  
Milwaukee, WI 53205-2596

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

---

2018AP704-CRNM      State of Wisconsin v. Gerald J. Jenkins (L.C. #2016CF707)

Before Reilly, P.J., Gundrum and Hagedorn, 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).**

Gerald J. Jenkins appeals from a judgment convicting him of felony retail theft as party to a crime (PTAC), PTAC misdemeanor criminal damage to property, and obstructing. Jenkins' appointed appellate counsel has 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). Jenkins has not exercised his right to file a response despite being granted two extensions to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the order because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

A representative of a Walmart loss-prevention team observed Jenkins and three others concealing unpaid-for merchandise in their clothing. The three others were minors. The four were on the store's "watch list" because they had been observed stealing from other Walmarts in a multi-county area. They fled when police arrived.

After being apprehended, Jenkins was charged with one count each of PTAC felony retail theft, PTAC misdemeanor criminal damage to property, and obstructing, also a misdemeanor. He also was charged with three counts of intentionally contributing to the delinquency of a minor. He pled guilty to the PTAC and obstructing charges; the other three counts were dismissed outright. The court sentenced him to eighteen months' initial confinement and twenty-four months' extended supervision on the felony retail theft charge. On the misdemeanor counts, the court withheld sentence and placed him on two years' probation concurrent to each other but consecutive to the felony. This no-merit appeal followed.

The no-merit report first addresses whether there would be arguable merit to a challenge to the circuit court's finding that Jenkins' guilty pleas were knowingly, intelligently, and voluntarily entered, and identified no issues of arguable merit.

---

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

Upon our independent review, as mandated by *Anders*, we observe that the plea colloquy sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, with one exception. The court did not give Jenkins the precise deportation warning § 971.08(1)(c) mandates. It did, however, expressly ask Jenkins where he was born; Jenkins answered, “Milwaukee, Wisconsin.”

The failure to give the WIS. STAT. § 971.08(1)(c) warning is grounds for relief only if the defendant can show that his or her plea is likely to result in deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2). Jenkins’ reply satisfies us that he would not be at risk of any such consequences. Further, the plea questionnaire/waiver-of-rights form he signed advised him of those consequences and he confirmed to the court that he reviewed the form with counsel and understood it. There would be no merit to a motion to withdraw the plea based on the failure to give the verbal deportation warning.

The no-merit report also considers whether the circuit court erroneously exercised its discretion in sentencing Jenkins by failing to consider proper factors or imposing an overly harsh and excessive sentence. Counsel properly analyzes the facts, the case law, and the circuit court’s sentencing rationale. Our review of the record confirms that no issue of arguable merit could arise from this point.

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 Jenkins further in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved from further representing Jenkins in this 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*