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February 20, 2019

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

2018AP1091-CRNM State of Wisconsin v. Edward T. Linn (L. C. No. 2014CF360)

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).

Edward T. Linn appeals from a judgment convicting him of second-degree sexual assault of a child following the revocation of a deferred prosecution agreement (DPA). He also appeals from a judgment sentencing him following the revocation of probation on a prior conviction for

exposing genitals to a child.¹ Attorney Jaymes K. Fenton has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18);² *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses Linn’s plea on the sexual assault charge and the sentences on both charges. Linn was sent a copy of the report, but he has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we conclude that counsel may be allowed to withdraw and the judgments of conviction may be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State initially charged Linn with two counts of second-degree sexual assault of a child under the age of sixteen, based upon allegations that Linn grabbed and bit the breasts of a fifteen-year-old girl who was visiting at his house, choked her, pushed her to her knees, forced the tip of his penis into her mouth, and tried to get her to perform oral sex on him while she struggled to get away. Linn entered into a stipulation with the State in which he agreed to enter guilty or no-contest pleas to one of the original sexual assault counts and to a reduced second count of exposing genitals to a child, as well as to a bail jumping charge in a separate case, in exchange for the dismissal of several other charges in two other cases. Under the stipulation, Linn was to proceed to sentencing on the count of exposing genitals to the child with a joint recommendation for probation with conditional jail time. Sentencing on the sexual assault charge would be stayed pending Linn’s successful completion of a DPA.

¹ Although the notice of appeal refers to a judgment of conviction in the singular, the no-merit report discusses both judgments, which were entered on the same day.

² All further references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Linn entered no-contest pleas in accordance with the stipulation, and the circuit court accepted the pleas after conducting a colloquy. The circuit court followed the joint recommendation of the parties and placed Linn on probation for two years with six months of conditional jail time on the count of exposing genitals to a child. However, both the DPA and probation were revoked the following year after Linn was charged with a new felony bail jumping offense. The circuit court then sentenced Linn to six years of initial incarceration and nine years of extended supervision on the sexual assault count, with a concurrent term of one year of initial incarceration and one year of extended supervision on the exposing genitals count.

We agree with counsel's analysis and conclusion that any challenge to the plea on the sexual assault charge or to the sentences imposed following the revocations of the DPA and probation would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that attorney Jaymes K. Fenton is relieved of any further representation of Edward Linn in this matter pursuant to 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