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**DISTRICT III/IV**

February 27, 2019

To:

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

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2017AP726-CRNM      State of Wisconsin v. Michael W. Winkler, Sr. (L.C. # 2015CF172)

Before Sherman, Blanchard, and Kloppenburg, 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).**

Attorney Roberta Heckes, appointed counsel for Michael Winkler, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Winkler with a copy of the report, and both counsel and this court

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

advised him of his right to file a response. Winkler has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, as well as the no-merit report, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Winkler pled guilty to one count of child abuse causing great bodily harm. The court imposed an indeterminate sentence of ten years in prison.

The no-merit report addresses whether Winkler's plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Winkler was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erred in denying Winkler's motion to suppress his statements. Unlike Winkler's other pretrial motions, this issue could be raised on appeal regardless of Winkler's plea. *See* WIS. STAT. § 971.31(10). The circuit court held an evidentiary hearing at which it heard testimony from the detective who spoke with Winkler. The court found that Winkler was not in custody because the conversation occurred at his home, he was free to leave or ask the police to leave, and there was no reason for Winkler to feel he was restrained. These historical facts were not in question, and there is no basis to argue that this situation constituted custody. There is no arguable merit to this issue.

The court also found that Winkler's statements were voluntary. Although the court was concerned about the length and confrontational tone of the interview, the court determined that other factors, such as Winkler's own "rather combative" tone and his desire to "give his side of

the story” showed that his statements were voluntary. Again, the historical facts are not in dispute, and there is no arguable merit to the legal aspect of this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis.2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for 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 Heckes is relieved of further representation of Winkler in this matter. *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*