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**DISTRICT II**

March 20, 2019

To:

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

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2018AP1464-CRNM      State of Wisconsin v. Karmin B. Dearing (L.C. #2017CF1403)

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).**

Karmin B. Dearing appeals from a judgment convicting him of two counts of felony intimidation of a witness. Dearing's appellate counsel 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). Dearing filed a

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

response. After reviewing the record, counsel's report, and Dearing's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Dearing was convicted following guilty pleas to two counts of felony intimidation of a witness. The charges stemmed from his repeated attempts to dissuade the victim of another criminal case from testifying in that matter. Several additional charges were dismissed and read in.<sup>2</sup> The circuit court imposed an aggregate sentence of three years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Dearing's guilty pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Dearing 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. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment detailing the elements of the offenses. We agree with counsel that a challenge to the entry of Dearing's guilty pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals 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). The court considered the seriousness of the offenses, Dearing's character, and

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<sup>2</sup> The additional charges were seven counts of misdemeanor intimidation of a victim and two counts of felony intimidation of a witness.

the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the read-in offenses and Dearing’s criminal history, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Dearing’s sentence would lack arguable merit.

The no-merit report also addresses whether Dearing was afforded effective assistance of trial counsel. There is nothing in the record to suggest that Dearing received ineffective assistance. Indeed, at the plea hearing, Dearing indicated that he was “totally satisfied” with the representation that he received. Consequently, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

As noted, Dearing filed a response to the no-merit report. The response is difficult to decipher, as it is rambling and often nonsensical. It appears to raise issues relating to a criminal case that is not before us. It also questions the circuit court’s decision to impose DNA surcharges, which were mandatory in this case. *See* WIS. STAT. § 973.046(1r). In any event, we are not persuaded that the response presents an issue of arguable merit.

Our independent review of the record 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 Steven Zaleski of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of Dearing in this matter.

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*