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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 I**

April 3, 2019

To:

Hon. M. Joseph Donald  
Circuit Court Judge  
821 W. State St., Rm. 506  
Milwaukee, WI 53233

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State Street  
Milwaukee, WI 53233

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

Leon W. Todd III  
Assistant State Public Defender  
735 N. Water St., Ste. 912  
Milwaukee, WI 53202-4116

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

Stephon M. Mosley 528874  
Waupun Correctional Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

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

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2017AP2208-CRNM      State of Wisconsin v. Stephon M. Mosley (L.C. # 2014CF5691)

Before Brennan, Kloppenburg and Brash, 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).**

Stephon M. Mosley appeals a judgment entered after he pled guilty to first-degree sexual assault of a child. *See* WIS. STAT. § 948.02(1)(d) (2013-14).<sup>1</sup> His appellate counsel, Assistant State Public Defender Leon W. Todd III, has filed a no-merit report pursuant to WIS. STAT. RULE

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

809.32, and *Anders v. California*, 386 U.S. 738 (1967). Mosley received a copy of the report, was advised of his right to file a response, and has elected not to do so. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

The criminal complaint alleged that in December 2014, Mosley kidnapped and sexually assaulted a child. Prior to the preliminary hearing, Mosley's counsel requested a competency evaluation. The examining psychiatrist concluded that Mosley was competent to proceed, and Mosley challenged that conclusion. At the competency hearing that followed, the circuit court agreed with the psychiatrist's determination.

Approximately six months later, Mosley's newly appointed counsel requested another competency evaluation. The examining psychiatrist, who was not the same individual who originally evaluated Mosley, concluded that Mosley was competent to proceed. Mosley did not challenge this conclusion.

Mosley subsequently entered into a plea agreement with the State. Pursuant to the agreement, Mosley agreed to plead guilty to one count of first-degree sexual assault of a child (sexual contact with a child under the age of sixteen by use of force where the actor is at least eighteen years of age), and the State agreed to dismiss the other charges that were pending against him. The State additionally agreed to recommend to the circuit court that Mosley serve twenty-five years of initial confinement and seven years of extended supervision. The circuit court conducted a plea colloquy, accepted Mosley's guilty plea, and found him guilty. The circuit court followed the State's recommendation and sentenced Mosley to twenty-five years of initial confinement and seven years of extended supervision.

The no-merit report addresses three issues: (1) whether the circuit court erred when it found Mosley was competent to stand trial; (2) whether Mosley could seek plea withdrawal on grounds that “his plea was not knowingly, intelligently, and voluntarily entered, or because a factual basis was lacking”; and (3) whether the circuit court erroneously exercised its sentencing discretion. The no-merit report thoroughly addresses each of those issues, providing citations to the record and relevant authority.

As to competency, the no-merit report concludes that the circuit court applied the correct legal standard, and its competency determination was supported by the facts in the record. “[A] defendant is incompetent if he or she lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his or her defense.” *State v. Byrge*, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477. Twice, the circuit court referred Mosley for competency examinations. The examinations were performed by two different psychiatrists, both of whom concluded that he was competent to stand trial.

As to the results of the first report, which Mosley challenged, the circuit court made findings to support its determination that Mosley was competent. This court will uphold a circuit court’s competency determination unless that determination is clearly erroneous. *See State v. Garfoot*, 207 Wis. 2d 214, 225, 558 N.W.2d 626 (1997). In light of the psychiatrists’ reports and the standard of review, any further proceedings in regard to Mosley’s competency would lack arguable merit.

The no-merit report next addresses the plea and sentencing. With respect to Mosley’s plea, the no-merit report analyzes the circuit court’s compliance with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 260-62, 389 N.W.2d 12 (1986), discussing issues such as the

circuit court's explanation of the elements of the crime, including the meaning of sexual contact, and the fact that Mosley was giving up certain constitutional rights. With respect to the factual basis for the plea, Mosley's trial counsel advised the circuit court that the facts outlined in the complaint provided an adequate basis for Mosley's guilty plea. The no-merit report concludes that an argument that Mosely's plea was not knowing, intelligent, and voluntary, or supported by a factual basis, would lack merit.

With respect to the sentence imposed, the no-merit report provides citations to the sentencing transcript and analyzes the circuit court's compliance with *State v. Gallion*, 2004 WI 42, ¶¶40-46, 270 Wis. 2d 535, 678 N.W.2d 197, and concludes that an argument that the court misused its discretion would be without arguable merit. Finally, the no-merit report concludes there would be no arguable merit to asserting that Mosley's sentence was unduly harsh and excessive, given that Mosley could have been sentenced to sixty years of imprisonment. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

This court is satisfied that the no-merit report properly analyzes the issues it raises, and based on our independent review of the record, we agree with appellate counsel's assessment that none of those issues presents an issue of arguable merit.

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 Mosley further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leon W. Todd III is relieved from further representing Stephon M. Mosley in this appeal. *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*