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**DISTRICT IV**

April 29, 2019

To:

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

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2018AP446-CRNM	State of Wisconsin v. Michael D. Napoleon (L.C. # 2015CF147)
2018AP447-CRNM	State of Wisconsin v. Michael D. Napoleon (L.C. # 2015CF477)
2018AP448-CRNM	State of Wisconsin v. Michael D. Napoleon (L.C. # 2015CM266)

Before Lundsten, P.J., Sherman and Fitzpatrick, 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).**

In these consolidated no-merit appeals, Michael D. Napoleon appeals from judgments of conviction entered upon his no contest pleas to three counts across three circuit court cases. Specifically, Napoleon was convicted of possession with intent to deliver heroin, felony child

abuse as a repeater, and receiving stolen property. Napoleon's appellate counsel 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). Napoleon received a copy of the report and has filed a response. In turn, appellate counsel filed a supplemental no-merit report. Upon consideration of the original and supplemental no-merit reports, Napoleon's response, and our independent review of the record, we conclude that the judgments may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

On May 15, 2015, law enforcement executed a search warrant at a motel room occupied by Napoleon. As a result of the search, Napoleon was charged in Wood County Circuit Court Case No. 2015CF147 with possession with intent to deliver more than three but less than ten grams of heroin, a Class E felony. He was also charged in a separate case, Wood County Case No. 2015CM266, with receiving stolen property, a Class A misdemeanor. Napoleon was on probation in connection with a prior case and, though his agent initially placed a hold on Napoleon, the hold was lifted and Napoleon was released. Napoleon then failed to appear for a scheduled court date, and a warrant was issued for his arrest. On October 7, 2015, following a colloquy with the circuit court, Napoleon entered no contest pleas to the two charges, and the circuit court ordered a presentence investigation report (PSI). Napoleon failed to make himself available to the PSI writer, and a PSI was prepared and filed without his cooperation or input. Thereafter, he failed to appear for his scheduled sentencing hearing, and the court issued another warrant. Napoleon was soon arrested. The State filed a new complaint, Case No. 2015CF477,

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

charging Napoleon with two counts of physical abuse of a child (Class H felonies), two counts of felony bail jumping (Class H felonies), and two counts of misdemeanor bail jumping (Class A misdemeanors). All six counts were charged with the WIS. STAT. § 939.62 repeater enhancer alleging habitual criminality.

Ultimately, Napoleon entered into a plea agreement that addressed all three circuit court cases, including those to which he had pled but was awaiting sentence. In exchange for his no contest plea to count one in No. 2015CF477 (physical abuse of a child), the State moved to dismiss and read in counts two through six, along with a wholly separate case, No. 2015CF473, and to recommend four years of initial confinement followed by three years of extended supervision. In No. 2015CF147 (possession with intent to deliver heroin), the State would recommend a concurrent sentence comprising four years of initial confinement followed by five years of extended supervision. On the misdemeanor (receiving stolen property), the State agreed to recommend a concurrent ninety-day jail sentence.<sup>2</sup>

The circuit court imposed the following sentences: on the heroin charge, five years of initial confinement followed by five years of extended supervision; on the physical abuse count, two and one-half years of initial confinement followed by two and one-half years of extended supervision to run consecutive to the heroin sentence; and on the misdemeanor, a concurrent ninety-day jail sentence. Napoleon appeals.

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<sup>2</sup> Napoleon had contemplated moving to withdraw his no contest pleas entered on October 7, 2015, on the ground that the plea agreement was unclear. The parties agreed that the new plea agreement “cures whatever defects might have existed in the process up to this point” regardless of whether the circuit court followed the newly negotiated recommendations.

Appellate counsel's no-merit report addresses the potential issues of whether the search warrant was supported by adequate probable cause (and whether its no-knock execution was supported by reasonable suspicion), whether Napoleon's no contest pleas were freely, voluntarily and knowingly entered, whether the sentences were authorized by law and the result of a proper exercise of discretion,<sup>3</sup> whether the sentences imposed were unduly harsh, whether the sentencing court relied on inaccurate information, and the propriety of the circuit court's sentence credit award. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit and, with small exception, will not discuss them further.

In his response to the no-merit report, Napoleon asserts that trial counsel was ineffective for failing to file a suppression motion challenging the search warrant. He alleges that the affidavit was insufficient because it relied on uncorroborated information provided by an untested and unreliable informant. Napoleon further contends that the good faith exception to the exclusionary rule does not apply because the affidavit omitted critical information about the informant's reliability and veracity and because the affidavit is "so lacking in indicia of probable cause that reliance is unreasonable."

Appellate counsel's original and supplemental no-merit reports set forth the proper legal standards and principles on this claimed issue. The informant about whom Napoleon complains was seen entering the subject motel and leaving about five minutes later. She was arrested with

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<sup>3</sup> On the physical abuse charge, the plea-taking court informed Napoleon of the eight-year enhanced maximum sentence. Any challenge to the sufficiency of Napoleon's admission to or the State's proof of the repeater enhancer would lack arguable merit. The circuit court's sentence on the child abuse charge was less than the unenhanced six-year maximum and did not invoke the WIS. STAT. § 939.62 repeater enhancer.

drug paraphernalia and told police she was a heroin addict and had purchased heroin at the subject motel from a man she identified as Napoleon. She said she had purchased heroin from this man 300-500 times over the last two years. The informant's statements were made against her penal interest and support her reliability. *State ex rel. Bena v. Crosetto*, 73 Wis. 2d 261, 267, 243 N.W.2d 442 (1976). Further, the affidavit contained corroborating information, including the officer's independent observations of Napoleon's car in the motel's parking lot "on numerous recent occasions." Because we agree with counsel's analysis and conclusion that there was no meritorious challenge to mount against the warrant, we need not consider whether trial counsel was ineffective for failing to file a suppression motion based on that warrant.

At the time of the preliminary hearing in the heroin case, Napoleon had not yet obtained counsel. His co-defendant appeared with counsel but waived her right to a preliminary hearing. Without objection from Napoleon, the circuit court held a contested preliminary hearing and bound Napoleon over for trial. The circuit court told him that once he was represented, counsel could request a second preliminary hearing. Napoleon's response briefly suggests that he requested a second preliminary hearing after counsel was appointed. We agree with the analysis in the supplemental no-merit report concluding that no meritorious issue arises from these circumstances, and we will not discuss it further.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved from further representing Michael D. Napoleon in these appeals. *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*