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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  
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**DISTRICT III**

August 13, 2019

To:

Hon. John B. Rhode  
Circuit Court Judge  
800 Clermont St.  
Antigo, WI 54409

Daniel Goggin II  
Goggin & Goggin  
P.O. Box 646  
Neenah, WI 54957-0646

Marilyn Baraniak  
Clerk of Circuit Court  
Langlade County Courthouse  
800 Clermont Street  
Antigo, WI 54409

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

Elizabeth R. Gebert  
District Attorney  
800 Clermont Street  
Antigo, WI 54409

Jason G. James  
Days Inn  
6319 Truax Lane, Room 132  
Eau Claire, WI 54703

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

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2018AP541-CRNM      State of Wisconsin v. Jason G. James (L. C. No. 2009CF112)

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).**

Counsel for Jason James filed a no-merit report concluding no grounds exist to challenge James's conviction for delivering three grams or less of heroin, contrary to WIS. STAT. § 961.41(1)(d)1. (2017-18).<sup>1</sup> James was informed of his right to file a response to the no-merit

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

report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

The State charged James with heroin delivery, in an amount of three grams or less, as a second and subsequent offense. In exchange for his guilty or no-contest plea to the heroin delivery charge without the enhancer, the State agreed to dismiss charges in another case and recommend that the circuit court defer entry of judgment. The court accepted James's no-contest plea and found him guilty and deferred entry of judgment for two years, during which time James had agreed to cooperate with law enforcement and refrain from committing any crime "to an arrest/probable cause level." The deferred entry of judgment agreement was subsequently revoked, and the matter proceeded to sentencing. Out of a maximum possible twelve-year and six-month sentence, the circuit court imposed and stayed a six-year sentence and ordered four years of probation, consistent with the parties' joint recommendation.

The record discloses no arguable basis for withdrawing James's no-contest plea. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that James signed, informed James of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no-contest plea. The court confirmed that James understood the court was not bound by the terms of the plea agreement. See *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the court properly found that a sufficient factual basis existed in the record to support the conclusion that James committed the crime charged. Although the circuit court failed to advise James of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c), a supplemental

no-merit report indicates James is a United States citizen not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit. The record shows the plea was knowingly, voluntarily and intelligently made. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Where a defendant affirmatively joins or approves a sentence recommendation that the circuit court adopts, the defendant cannot attack the sentence on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced James consistent with the joint recommendation. In any event, it cannot reasonably be argued that James's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Therefore,

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

IT IS FURTHER ORDERED that attorney Daniel R. Goggin II is relieved of his obligation to further represent Jason James 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*