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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

**DISTRICT II**

August 21, 2019

To:

Hon. Robert J. Wirtz  
Circuit Court Judge  
Fond du Lac County Courthouse  
160 S. Macy St.  
Fond du Lac, WI 54935

Ramona Geib  
Clerk of Circuit Court  
Fond du Lac County Courthouse  
160 S. Macy St.  
Fond du Lac, WI 54935

Katherine Seifert  
Seifert Law Office  
430 Ahnaip St.  
Menasha, WI 54952

Eric Toney  
District Attorney  
Fond du Lac County  
160 S. Macy St.  
Fond du Lac, WI 54935

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

Jonathon M. Mark, #330078  
Fond du Lac County Jail  
63 Western Ave.  
Fond du Lac, WI 54935

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

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2018AP1755-CRNM      State of Wisconsin v. Jonathon M. Mark (L.C. #2016CM714)

Before Reilly, P.J.<sup>1</sup>

**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).**

Jonathon M. Mark appeals from a judgment convicting him of disorderly conduct and resisting an officer. Mark's appellate counsel filed a no-merit report pursuant to WIS. STAT.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version.

RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Mark filed multiple responses. Counsel then filed a supplemental no-merit report. After reviewing the record, counsel's reports, and Mark's responses, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Mark was convicted following no contest pleas to disorderly conduct and resisting an officer. The charges stemmed from Mark's altercation with a woman at a bar and his subsequent failure to obey police commands. The circuit court imposed an aggregate sentence of eight months and eleven days in jail. This no-merit appeal follows.

The no-merit report addresses whether Mark's no contest pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Mark 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. We agree with counsel that a challenge to the entry of Mark's no contest 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, Mark's character, and 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 Mark's lengthy criminal record, 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 Mark's sentence would lack arguable merit.

As noted, Mark filed multiple responses to the no-merit report. In them, he accuses counsel of ineffective assistance for failing to secure video evidence from the bar where the altercation took place. Relatedly, he accuses the State of withholding the video evidence. Mark also asserts that a witness at the bar named Jessica Krause had favorable evidence in his case. Finally, Mark suggests that the circuit court was ambiguous as to whether his sentence was concurrent to the one he was serving on a separate probation revocation case. We are not persuaded that Mark's response presents an issue of arguable merit.

First, as explained in the supplemental no-merit report, there is no video evidence from the bar. Whatever video was taken on the night of the altercation was not saved and never possessed by the State. Thus, counsel cannot be faulted for failing to secure it, and the State cannot be faulted for failing to turn it over.<sup>2</sup>

Second, by entering his pleas, Mark forfeited his ability to raise defenses to the charges against him. See *State v. Kely*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. Thus, his claimed discovery of a favorable witness is largely irrelevant. In any event, appointed counsel's investigator interviewed Krause, and she denied seeing the incident in question.

Finally, our review of the sentencing transcript persuades us that the circuit court intended to impose consecutive sentences. The court specifically indicated that the jail on the

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<sup>2</sup> There is no indication that the State's failure to preserve the video evidence was done in bad faith.

disorderly conduct count was “consecutive to any other sentence you’re serving,” and that the jail on the resisting an officer count was consecutive to the jail on the disorderly conduct count.

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 Katherine Seifert 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 Katherine Seifert is relieved of further representation of Mark 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*