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**DISTRICT I**

August 14, 2019

To:

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

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2018AP1217-CRNM	State of Wisconsin v. Dominic Champagne Glass (L.C. # 2016CF4417)
2018AP1218-CRNM	State of Wisconsin v. Dominic Champagne Glass (L.C. # 2017CF65)

Before Brash, P.J., Kessler and Dugan, 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).**

Dominic Champagne Glass pled guilty to one count of possessing with intent to deliver more than ten grams but not more than fifty grams of methamphetamine while in a jail. He faced maximum penalties for that offense of thirty years of imprisonment and a \$100,000 fine. *See*

WIS. STAT. §§ 961.41(1m)(e)3. (2015-16),<sup>1</sup> 939.50(3)(d) (2015-16), 961.49(1m)(b)2. (2015-16). A few weeks later, Glass pled guilty to one count of possessing a firearm while a felon, as a habitual offender. He faced maximum penalties for that offense of fourteen years of imprisonment and a \$25,000 fine. *See* WIS. STAT. §§ 941.29(1m)(a) (2015-16), 939.50(3)(g) (2015-16), 939.62(1)(b) (2015-16). At a consolidated sentencing proceeding, the circuit court imposed two evenly bifurcated three-year terms of imprisonment and ordered Glass to serve the sentences consecutively with each other and with any other sentence previously imposed. Additionally, the circuit court found Glass ineligible for the challenge incarceration program (CIP) and the Wisconsin substance abuse program (WSAP).

Glass moved for sentence modification, asking the court to find him eligible for CIP and WSAP. The circuit court held a postconviction hearing and denied relief. He appeals.

Appellate counsel, Attorney Jorge R. Fragoso, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Glass did not file a response. Based upon our independent review of the records and the no-merit report, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint in Milwaukee County case No. 2016CF4417, which underlies appeal No. 2018AP1217-CRNM, police executed a search warrant in connection with the arrest of one Otis Lockett and found a cell phone video that depicted Glass holding a

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

handgun. Forensic analysis of the video revealed that it was recorded on June 2, 2016, and further investigation revealed that the recording was made in Milwaukee, Wisconsin. Certified documents attached to the complaint reflected that, prior to June 2, 2016, Glass had been convicted of a felony, and the complaint further reflected that the felony conviction remained of record and unreversed. The State charged Glass with possessing a firearm while a felon, as a repeat offender.

According to the criminal complaint in Milwaukee County case No. 2017CF65, which underlies appeal No. 2017AP1218-CRNM, Glass was an inmate in the Milwaukee County Jail on September 27, 2016, when he arranged to put fifty-one pills containing methamphetamine in an envelope addressed to an unconfined person and to place the envelope in the jail's mail delivery system. The State charged Glass with one count of possessing, while in a jail and with intent to deliver, more than ten grams but not more than fifty grams of methamphetamine.

Glass decided to resolve the charges against him with a plea agreement. He agreed to plead guilty as charged and to make a recommendation jointly with the State for an aggregate sentence of three years of initial confinement and three years of extended supervision, consecutive to any other sentence. The circuit court accepted his guilty plea in each case, and at sentencing the circuit court imposed the aggregate six-year term of imprisonment that the parties jointly requested.<sup>2</sup>

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<sup>2</sup> On May 8, 2017, the Honorable Janet Protasiewicz accepted Glass's guilty plea in case No. 2017CF65. The matter was then consolidated with case No. 2016CF4417 for disposition purposes. On June 1, 2017, the Honorable T. Christopher Dee accepted Glass's guilty plea in the latter case and imposed sentence in both matters.

We first consider whether Glass could pursue an arguably meritorious challenge to the validity of his guilty pleas. We agree with appellate counsel’s conclusion that he could not do so. The circuit court in each case conducted a guilty plea colloquy that complied with the circuit court’s obligations when accepting a plea other than not guilty. *See* WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The records—including the plea questionnaire and waiver of rights forms and addenda; the attached jury instructions describing the elements of the crimes to which Glass pled guilty; and the plea hearing transcripts—demonstrate that Glass entered his guilty pleas knowingly, intelligently, and voluntarily.<sup>3</sup>

We also agree with appellate counsel’s conclusion that the circuit court properly exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court identified appropriate sentencing objectives and discussed the sentencing factors that it viewed as relevant to achieving those objectives. *See id.*, ¶¶41-43. The sentences that the circuit court selected were well within the maximum sentences allowed by law and cannot be considered unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Moreover, the circuit court imposed the sentences that Glass requested. Accordingly, we are satisfied that a challenge to the sentences

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<sup>3</sup> In case No. 2017CF65, Glass initialed and filed with his guilty plea questionnaire a copy of WIS JI—CRIMINAL 6035, which describes the elements of the crime of possessing with intent to deliver a controlled substance. As relevant here, those elements are: (1) the defendant possessed a substance; (2) the substance was methamphetamine; (3) the defendant knew the substance was methamphetamine; and (4) the defendant intended to deliver methamphetamine. *See id.* The instruction does not include the additional element of the offense to which Glass pled guilty, namely, that the defendant committed the crime while in a jail or correctional institution. *See* WIS. STAT. § 961.49(1m)(b)2. (2015-16); *see also* WIS JI—CRIMINAL 6004 & n.iv. During the guilty plea colloquy, however, the circuit court established on the record that Glass understood all of the elements of the crime, including specifically that he was incarcerated when he committed the offense.

would lack arguable merit. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (stating that a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

We last consider whether Glass can mount an arguably meritorious challenge to the circuit court's postconviction order denying his request to find him eligible to participate in CIP and WSAP. Both CIP and WSAP are prison programs offering substance abuse treatment. *See* WIS. STAT. §§ 302.045(1), 302.05(1)(am). When an inmate successfully completes either program, his or her remaining initial confinement time is converted to extended supervision time. *See* §§ 302.045(3m)(b), 302.05(3)(c)2. A circuit court exercises its discretion when determining a defendant's eligibility for these programs, and we will sustain the circuit court's conclusions if they are supported by the record and the overall sentencing rationale. *See State v. Owens*, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. § 973.01(3g)-(3m).<sup>4</sup>

Here, at the conclusion of the sentencing proceeding, the circuit court addressed Glass's eligibility to participate in CIP and WSAP while imprisoned. After determining that Glass was serving an earlier-imposed prison sentence for which he had not been found eligible to participate in either program, the circuit court found him ineligible in the instant cases, indicating that the decision would further the goal of consistency. In postconviction proceedings, the circuit court agreed that it had not given proper consideration at sentencing to Glass's potential eligibility for CIP and WSAP. The circuit court therefore held a hearing regarding his eligibility.

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<sup>4</sup> The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

The records do not suggest any arguably meritorious basis on which to challenge the circuit court's finding that he was ineligible to participate in the programs.

The records reflect that the circuit court fashioned Glass's sentences in light of the primary sentencing factors, namely, the seriousness of the offenses, Glass's character, and the need to protect the public, *see State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and the circuit court determined that its sentencing goals were deterrence and community protection, *see Gallion*, 270 Wis. 2d 535, ¶41. At the postconviction hearing, the circuit court considered that Glass had participated in WSAP while serving an earlier prison sentence, that he had been released early to extended supervision based on that participation, and that his extended supervision was subsequently revoked because he involved himself in new criminal activity. The circuit court found that Glass failed to "take advantage of" the prison program he completed and that the program plainly "didn't work" because he committed more crimes, including those at issue in the instant cases. The remarks reflect the circuit court's determination that participation in an early release program was not an effective means of furthering the sentencing goals of deterrence and community protection and therefore eligibility for such participation was unwarranted. Accordingly, the record shows that the circuit court properly exercised its discretion in denying Glass eligibility for CIP and WSAP. Further pursuit of this issue would lack arguable merit.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgments of conviction and postconviction orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jorge R. Fragoso is relieved of any further representation of Dominic Champagne Glass on 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*