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**DISTRICT II**

October 2, 2019

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

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2018AP2241-CRNM      State of Wisconsin v. Israel T. Staley (L.C. #2016CF912)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Israel T. Staley appeals from a judgment convicting him of felony theft and conspiracy to commit felony theft, both in amounts over \$10,000. Staley's appellate counsel filed a no-merit

report<sup>1</sup> pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>2</sup> and *Anders v. California*, 386 U.S. 738 (1967). Staley filed a response. After reviewing the record, counsel's report, and Staley's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.<sup>3</sup> WIS. STAT. RULE 809.21.

Staley was convicted following guilty pleas to felony theft and conspiracy to commit felony theft, both in amounts over \$10,000. The charges stemmed from his participation in a scheme to steal vehicles from a car dealership. Several additional charges were dismissed and read in. The circuit court imposed an aggregate sentence of ten years of initial confinement and ten years of extended supervision. Staley sought postconviction relief but was unsuccessful.<sup>4</sup> This no-merit appeal follows.

The no-merit report addresses whether Staley's guilty pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with

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<sup>1</sup> The no-merit report was filed by Attorney Brian C. Hagner, who has been replaced by Attorney Christopher D. Sobic as Staley's appellate counsel.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

<sup>3</sup> There is a clerical error in the judgment of conviction regarding the amount of sentence credit due to Staley. The judgment lists 360 days; however, the circuit court's oral pronouncement called for 361 days. We remand the matter to the circuit court so that the judgment can be amended to conform with the oral pronouncement.

<sup>4</sup> Staley moved to withdraw his guilty pleas on the ground that the circuit court had not informed him of the mandatory DNA surcharges for his convictions. The postconviction court denied the motion. As noted by counsel, Staley's argument for plea withdrawal on the basis of the DNA surcharges has been foreclosed by recent case law. See *State v. Freiboth*, 2018 WI App 46, ¶12, 383 Wis. 2d 733, 916 N.W.2d 643.

Staley 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 Staley's guilty 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, Staley'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 Staley'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 Staley's sentence would lack arguable merit.

As noted, Staley filed a response to the no-merit report. In it, he complains that the prosecutor abused his discretion by initially charging Staley with so many crimes. He further suggests that his convictions are multiplicitous, thereby subjecting him to double jeopardy. Staley also raises a claim of ineffective assistance of trial counsel for failing to present these issues to the circuit court before entering his pleas. Finally, he asserts that his convictions lack a factual basis.

We are not persuaded that Staley's response presents an issue of arguable merit. To begin, by entering his pleas, Staley forfeited the right to raise nonjurisdictional defects and

defenses, including alleged constitutional violations. *See State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. This precludes his claims against the prosecutor and trial counsel. Moreover, Staley’s convictions are not multiplicitous because (1) the offenses are not identical in law and fact;<sup>5</sup> and (2) there is no indication that the legislature did not intend to authorize multiple punishments. *See State v. Ziegler*, 2012 WI 73, ¶¶60-61, 342 Wis. 2d 256, 816 N.W.2d 238. Finally, the record demonstrates that there was a factual basis for Staley’s convictions. At the plea hearing, the parties asked the circuit court to rely on the complaint, which established that (1) Staley had been captured on various security videos stealing key fobs from a car dealership and later returning to the dealership to steal vehicles from its lot; (2) Staley was apprehended in a vehicle containing additional stolen fobs, dealer registration plates, and screw drivers; (3) text messages between Staley and a codefendant referenced “orders” being placed for the stolen vehicles; and (4) the dealership had six vehicles taken from its lot.<sup>6</sup>

Our independent review of 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 Christopher D. Sobic of further representation in this matter.

Upon the foregoing reasons,

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<sup>5</sup> Felony theft and conspiracy to commit felony theft require proof of different elements. *See* WIS JI-CRIMINAL 1441 and 570. Furthermore, the offenses were alleged to have been committed on different dates (June 2, 2016 and June 4, 2016).

<sup>6</sup> We also note that where, as here, the guilty pleas are pursuant to a plea bargain, the circuit court need not go to the same length to determine whether the facts would sustain the charges as it would where there is no negotiated plea. *Broadie v. State*, 68 Wis. 2d 420, 423-34, 228 N.W.2d 687 (1975).

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Staley 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*