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**DISTRICT IV**

November 14, 2019

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

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2018AP1624-CRNM State of Wisconsin v. Andrew A. Freeman (L.C. # 2016CF156)

Before Fitzpatrick, P.J., Blanchard and Kloppenburg, 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).**

Andrew A. Freeman appeals from a judgment convicting him of physical abuse of a child for recklessly causing great bodily harm to his infant son, contrary to WIS. STAT. § 948.03(3)(a) (2017-18).[1] Freeman's appellate counsel has filed a no-merit report pursuant to WIS. STAT.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Freeman received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment 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.

In 2015, Freeman's three-month-old son received emergency medical treatment for a tracheal injury. During surgery, a laceration was found on the infant's pharynx, and the surgeon said it was caused by "some type of object." Doctors also discovered that the child's left leg was fractured and that he had "bruising to the face, right lower leg, and tongue." Freeman was charged with physical abuse of a child for intentionally causing great bodily harm to his son, a Class C felony. Pursuant to a plea agreement, Freeman pled no contest to an amended information charging physical abuse by recklessly causing great bodily harm, a Class E felony. The parties jointly requested a presentence investigation report (PSI) prepared by the Department of Corrections. Freeman also submitted an alternative PSI for the court's consideration. The circuit court imposed a fifteen-year bifurcated sentence, with ten years of initial confinement followed by five years of extended supervision, to run consecutive to a Milwaukee County sentence arising from Freeman's subsequent neglect of the same infant victim.

The no-merit report first discusses whether Freeman's no-contest plea was knowing, intelligent, and voluntary. The circuit court engaged in a thorough colloquy that satisfied the requirements of WIS. STAT. § 971.08(1); ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594,

716 N.W.2d 906;[2] and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. In addition to its substantive plea-taking colloquy, the circuit court properly relied on Freeman's signed plea questionnaire and its attachments. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Based on the plea-taking colloquy and the written plea questionnaire, we agree with counsel's assessment that a challenge to Freeman's plea would lack arguable merit.

The no-merit report next 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 (quoted source omitted). The circuit court's sentencing remarks show that it considered: (1) the gravity of the offense, pointing to the infant's "very young" age and the severity and number of his injuries; (2) Freeman's character, which the court deemed "disgusting," "cowardly" and "morally reprehensible," even though he did not have "much of a criminal history," because he denied doing anything wrong and had ignored the child's injuries instead of seeking assistance; and (3) the protection of the public, determining that probation would unduly depreciate the offense severity and that confinement was "necessary to protect the public, little children, anybody you're around, a little child that can't defend themselves." *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court stated as its objectives public protection, "general deterrence and expressive function of punishment, the education of

[2] Appellate counsel's no-merit report suggests that the circuit court neglected to "advise the Defendant directly of the deportation consequences of his plea," and concludes that this fails to give rise to an arguably meritorious issue because Freeman is a citizen of the United States. While we have no reason to doubt appellate counsel's conclusion that Freeman is not subject to deportation, the transcript of (continued)

society what's morally and socially right." These are proper objectives. Further, we cannot conclude that, under the circumstances, the fifteen-year sentence is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). *See also* ***State v. Kaczynski***, 2002 WI App 276, ¶13, 258 Wis. 2d 653, 654 N.W.2d 300 (where defendant received the benefit of a substantial charging concession, the circuit court's imposition of the maximum sentence did not shock "the community's sense of justice").

Finally, the no-merit report addresses whether certain of the circuit court's "intemperate" sentencing remarks exhibit unfair bias. Here, the no-merit report refers to instances where the sentencing court called Freeman "a disgusting human being," a "punk," and "morally reprehensible." We agree with appellate counsel's analysis and conclusion in the no-merit report that even if these remarks were "unbecoming of a trial judge" (and we do not make that determination), they do not show that the sentencing judge treated Freeman unfairly in violation of his due process right to an impartial magistrate. The court was considering a life-threatening crime perpetrated by a father of an infant, and was further aware that Freeman had already been sentenced in Milwaukee County for a crime relating to that infant's ultimate death. The sentencing court's determination that Freeman was of poor character was grounded in reliably proven facts appropriately considered at sentencing.

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

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Freeman's September 20, 2017 plea hearing reflects that the circuit court did, in fact, provide the deportation warning required by WIS. STAT. § 971.08(1)(c).

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

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved from further representing Andrew A. Freeman in this 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*