OFFICE OF THE CLERK
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 I

January 24, 2020

To:

Hon. Jeffrey A. Conen
Safety Building
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Rm. 114
Milwaukee, WI 53233

Jeffrey W. Jensen
111 E. Wisconsin Ave., Ste. 1925
Milwaukee, WI 53202-4825

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

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

R'Yan A. Jhon-Thompson 668521
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2019AP1049-CRNM State of Wisconsin v. R'Yan A. Jhon-Thompson (L.C. # 2017CF3376)

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).

R'Yan A. Jhon-Thompson appeals from a judgment convicting him of two counts of child enticement. His appellate counsel, Jeffrey W. Jensen, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and ***Anders v. California***, 386 U.S. 738 (1967).[1]

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

Jhon-Thompson filed a response and appellate counsel filed a supplemental no-merit report. *See* RULE 809.32(1)(e) & (f). Upon consideration of these submissions and an independent review of the record as mandated by ***Anders***, 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.

The criminal complaint charged Jhon-Thompson with multiple felonies arising out of an alleged series of incidents involving two victims. The charges included two separate counts of repeated sexual assault of a child, three counts of exposing genitals, and one count of exposing a child to harmful material.

Ultimately, Jhon-Thompson pled guilty to two reduced charges of child enticement causing mental harm. Pursuant to the plea agreement, one charge of repeated sexual assault of a child, two counts of exposing genitals, and one count of exposing a child to harmful material were dismissed and read in at sentencing. The State additionally agreed to recommend a global sentence comprised of two to three years of initial confinement and five years of extended supervision. The circuit court accepted Jhon-Thompson's pleas and sentenced him to concurrent twelve-year sentences, each comprised of five years of initial confinement and seven years of extended supervision.

The no-merit report addresses the potential issues of whether Jhon-Thompson's pleas were knowingly, voluntarily, and intelligently entered and whether there is a basis on which to seek sentence modification. This court is satisfied that the no-merit report properly concludes the issues it raises are without merit, and we discuss them further only to briefly elaborate on

points that the no-merit report does not address. We also discuss some of the various issues Jhon-Thompson presents in his no-merit response.

The no-merit report does not address the circuit court's abbreviated advisement of the constitutional rights Jhon-Thompson waived by entering his pleas. We conclude that although limited, the circuit court's plea colloquy, in conjunction with the plea questionnaire, sufficiently explained and verified that Jhon-Thompson understood the constitutional rights he was waiving. *See* ***State v. Pegeese***, 2019 WI 60, ¶40, 387 Wis. 2d 119, 928 N.W.2d 590 (holding that "[a]lthough the circuit court did not individually recite and specifically address each constitutional right on the record, the plea colloquy proceedings as a whole reflect that [the defendant] understood the constitutional rights he was waiving").

During the plea colloquy, the circuit court also failed to advise Jhon-Thompson of potential deportation consequences as required under WIS. STAT. § 971.08(1)(c). The no-merit report does not address this shortcoming. However, to be entitled to plea withdrawal on this basis, Jhon-Thompson would have to show "that the plea is likely to result in [his] deportation, exclusion from admission to this country or denial of naturalization[.]" *See* § 971.08(2). There is no indication in the record that Jhon-Thompson can make such a showing.

Additionally, the circuit court did not expressly delineate the direct consequences of Jhon-Thompson's pleas during the plea colloquy. Yet again, our review of the colloquy as supplemented by the plea questionnaire and waiver of rights form that Jhon-Thompson signed, establish that he was notified of the direct consequences of his pleas before the circuit court accepted them. The circuit court made a point during the plea colloquy to verify that Jhon-Thompson had reviewed the form with his attorney. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32,

42, 317 Wis. 2d 161, 765 N.W.2d 794 (explaining that although a plea questionnaire and waiver of rights form may not be relied upon "as a substitute for a substantive in-court plea colloquy," it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken).

We ultimately conclude that the plea questionnaire and waiver of rights form, Jhon-Thompson's conversations with his trial counsel, and the circuit court's colloquy met the requirements for ensuring that his pleas were knowing, intelligent, and voluntary.[2]

Next, we address Jhon-Thompson's claim that the circuit court refused to accept his no-contest pleas, which he claims is a violation of his constitutional rights. During the plea hearing, the circuit court inquired of Jhon-Thompson:

> THE COURT: What's your plea to the charge of child enticement, count two?
>
> THE DEFENDANT: No contest.
>
> THE COURT: Why are we doing a no contest plea? I don't do no contest pleas unless you give me a very good reason, and I view it as not taking responsibility.
>
> [TRIAL COUNSEL]: Can I have one moment with my client, Your Honor?
>
> THE COURT: Sure.

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[2] We note in passing that on the plea questionnaire and waiver of rights form, the charges are properly referenced as "child enticement (mental health)." However, one of the charges includes a reference to a nonexistent subsection of WIS. STAT. § 948.07 by identifying (8) instead of (5). This appears to be a scrivener's error. The amended information filed the same day as the plea hearing properly referenced the two charges as violations of § 948.07(5). Both the State and the circuit court reiterated that the charges to which Jhon-Thompson was pleading were child enticement causing mental harm, i.e., § 948.07(5). There would be no arguable merit to claim that plea withdrawal is warranted based on this relatively minor, and isolated, error regarding the statutory subsection at issue.

(Off the record.)

[TRIAL COUNSEL]: Thank you, Your Honor. My client would like to change the plea.

Jhon-Thompson then entered guilty pleas to the two charges of child enticement.

As explained in the supplemental no-merit report, there is no constitutional right to enter a no-contest plea. Rather, such a plea is "subject to the approval of the court." *See* WIS. STAT. § 971.06(1)(c). Therefore, the circuit court had statutory authority to decide whether to accept Jhon-Thompson's no-contest pleas. In any event, here, the circuit court did not categorically refuse to accept Jhon-Thompson's no-contest pleas. Rather, the circuit court asked for information and Jhon-Thompson responded by changing his pleas. There would be no arguable merit to an appeal based on Jhon-Thompson's claim that the circuit court refused to accept his no-contest pleas.

Insofar as Jhon-Thompson hints that there is arguable merit to a motion to withdraw his pleas because factors extrinsic to the plea colloquy—his trial counsel purportedly telling him to plead guilty and she would then "fight it" on appeal—somehow rendered his plea unknowing, unintelligent, and involuntary, we are not convinced.[3] *See* ***Hoppe***, 317 Wis. 2d 161, ¶3 (highlighting the distinction between motions based on defects in the plea colloquy and motions based on factors extrinsic to the plea colloquy). In the supplemental no-merit report, appellate

[3] It is not entirely clear that this is what Jhon-Thompson is arguing. In his no-merit response, after asserting that trial counsel told him to plead guilty and said she would fight it on appeal, Jhon-Thompson submits that trial counsel did not communicate with him after he entered his pleas "in [his] attempt for guidance, even the appeal process." Therefore, his claim may center on trial counsel's conduct *after* he entered his guilty pleas. Jhon-Thompson does not elaborate on what additional communication he sought from trial counsel. We conclude that his vague allegations do not provide an arguable basis for concluding that trial counsel was somehow ineffective.

counsel advises that after Jhon-Thompson raised this issue during a conference, appellate counsel considered it and determined it would not be a basis for plea withdrawal. The supplemental no-merit report highlights the plea hearing transcript, which reveals that after Jhon-Thompson changed his no-contest pleas, Jhon-Thompson confirmed for the circuit court that no one threatened or promised him anything in order to get him to plead guilty and that he was satisfied with trial counsel's representation. Based on the record before us, an appellate challenge to the effectiveness of trial counsel on this basis would lack arguable merit.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Jhon-Thompson. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit or importance to warrant individual attention.[4] Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Jhon-Thompson further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Jeffrey W. Jensen is relieved of further representation of Jhon-Thompson in this matter. *See* WIS. STAT. RULE 809.32(3).

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[4] Some of Jhon-Thompson's claims relate to children's court and Child Protective Services documents concerning his son. Having reviewed the analysis and additional information provided in the supplemental no-merit report, which need not be repeated here, we conclude there is no arguable merit to a claim on this basis.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals