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**DISTRICT IV/III**

March 17, 2020

To:

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Dane County Courthouse  
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Department of Justice  
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You are hereby notified that the Court has entered the following opinion and order:

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2018AP478-CRNM      State of Wisconsin v. Daniel H. Callahan (L. C. No. 2017CF622)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Daniel Callahan has filed a no-merit report concluding there is no basis to challenge Callahan's conviction for maintaining a drug trafficking place. Callahan was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no merit to any

issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup>

Madison Police Department SWAT team members executed a search warrant on a multi-apartment complex on Mifflin Street. Callahan was the sole occupant of the apartment at the time of the search. The search disclosed various drug paraphernalia such as “Chore Boy”—a pot and pan scrubber that is placed in a crack pipe to smoke crack cocaine; pipes used to smoke crack cocaine; marijuana pipes; baggie corners; “push pipes” used to push crack cocaine into a cylinder; and “drug kits”—described as different containers for drug paraphernalia such as a marijuana grinder and scissors.

Callahan was detained, brought to the Madison Central Police District, and interviewed on video after waiving his *Miranda*<sup>2</sup> rights. Callahan told the officers they would find “crack” in the search of his residence. Callahan also said he “kept items for people who were homeless.” Callahan said several females “were staying off and on” at his residence. One of the women made money to support her drug habit by “hooking.” Callahan said her drug of choice was crack cocaine. Callahan stated a male individual who stayed with Callahan was “actively breaking into cars” and committing burglaries while staying at the residence. Callahan described this individual as “a heavy crack user.” Callahan also stated that one of the individuals brought several bags of powder cocaine back to the residence, where it was consumed.

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

<sup>2</sup> *See Miranda v. Arizona*, 384 U.S. 436 (1966).

Callahan told police that he smoked crack one to two times a week and that he kept a list of dealers in a yellow binder in his apartment. Callahan stated that some of the drug paraphernalia in his apartment belonged to him, and some belonged to people he was allowing to stay in his apartment. Callahan also stated that one of the females was selling crack when she was staying at his residence. Callahan readily admitted that he allowed numerous friends and acquaintances to use drugs inside his residence and he also allowed them to leave drug paraphernalia in his residence to be used when they were present.

The case was tried to a jury on the charge of maintaining a drug trafficking place, as a second or subsequent offense. After conferring for twenty-seven minutes, the jury found Callahan guilty as charged. The circuit court imposed a sentence consisting of eighteen months' initial confinement and eighteen months' extended supervision, but the court stayed the sentence and placed Callahan on twenty four months' probation.

The no-merit report addresses potential issues regarding suppression of evidence; jury selection; Callahan's choice to testify at trial; sufficiency of the evidence to convict; the propriety of opening statements and closing arguments; jury instructions; and the circuit court's sentencing discretion. Upon our independent review of the record, we agree with counsel's description, analysis, and conclusion that any challenge to these issues would lack arguable merit, and we will not further address them.

Our independent review of the record discloses no other potential issues for appeal.<sup>3</sup>

Therefore,

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

IT IS FURTHER ORDERED that attorney Patricia FitzGerald is relieved of further representing Daniel Callahan in this matter. *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*

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<sup>3</sup> We note the COMPAS risk assessment was mentioned in the presentence investigation report, but the record shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.