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

2018AP1806-CRNM State of Wisconsin v. Michael Ray Raspberry (L.C. # 2017CF5405)

Before Brash, P.J., Dugan and White, 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).

Michael Ray Raspberry appeals from a judgment of conviction for one count of second-degree sexual assault by use of force and three counts of fourth-degree sexual assault. *See* WIS. STAT. § 940.225(2)(a) and (3m) (2017-18).¹ Raspberry's appellate counsel, Bradley J.

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

Lochowicz, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Raspberry filed a response, and appellate counsel filed a supplemental no-merit report. We have independently reviewed the record, the no-merit report, the response, and the supplemental no-merit report, as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the judgment.

The criminal complaint alleged that on a single day, Raspberry approached four different women who were walking or running outside. The complaint alleged that Raspberry slapped or grabbed each woman's buttocks. Raspberry tackled the fourth woman, causing her to fall to the ground and fracture her rib and her wrist. Raspberry pulled down that woman's pants and underwear, put his fingers in her vagina, and appeared to be reaching for his waistband when a car approached, causing Raspberry to flee the scene. The complaint charged Raspberry with three counts of fourth-degree sexual assault for slapping the first three women. It charged Raspberry with one count of second-degree sexual assault and one count of substantial battery for his actions toward the fourth woman. All charges included the habitual criminality enhancer.

According to the criminal complaint, the police identified Raspberry after his fingerprint was recovered from a cellphone that he dropped when he ran away from the fourth woman. Raspberry confessed to all four incidents. Raspberry did not file any suppression motions with respect to his statement to the detectives or the search of his phone.

Raspberry entered pleas of not guilty and not guilty by reason of mental disease or defect ("NGI plea"). The trial court ordered a psychiatric examination. The examining psychiatrist concluded that Raspberry did not meet the criteria for an NGI plea, noting that Raspberry told

him and the detectives that on the day of the incidents, he “ingested a number of intoxicants including alcohol and drugs” and “attributes his wrongful behavior to his state of intoxication.” At the hearing where the trial court considered the report, trial counsel said that Raspberry was not contesting the examiner’s conclusion. Trial counsel said: “I have reviewed the doctor’s report with my client. It does not support the NGI plea.... [H]e would be withdrawing that plea.”²

Raspberry ultimately entered into a plea agreement with the State. In exchange for Raspberry’s guilty pleas to one count of second-degree sexual assault and three counts of fourth-degree sexual assault, all without the repeater enhancer, the State agreed to dismiss and read in the substantial battery charge. The State further agreed to recommend a total of twelve to fifteen years of initial confinement and seven years of extended supervision. Raspberry was free to argue for a lesser sentence.

The trial court conducted a thorough plea colloquy with Raspberry and accepted his guilty pleas. It reviewed with Raspberry his plea questionnaire and a written addendum outlining additional rights being waived, and it also referred to the printed jury instructions for the crimes. With respect to the charge of second-degree sexual assault, Raspberry admitted having sexual contact with the victim, rather than sexual intercourse, and the trial court accepted that admission. The trial court dismissed the penalty enhancers and the substantial battery charge, consistent with the plea agreement.

² This court has reviewed the examiner’s report. We discern no basis to challenge the report or the decision by trial counsel and Raspberry not to pursue NGI pleas.

At sentencing, trial counsel urged the trial court to consider a sentence of less than ten years of initial confinement. The State recommended a total of twelve to fifteen years of initial confinement and seven years of extended supervision, consistent with the plea agreement. The trial court sentenced Raspberry to twelve years of initial confinement and seven years of extended supervision for the second-degree sexual assault, consecutive to any other sentence he was presently serving. It imposed six months of consecutive straight time for each of the fourth-degree sexual assaults. Finally, the trial court ordered Raspberry to pay \$2421 in restitution to the woman who was injured and \$255 to the Crime Victim Compensation Fund.³

The no-merit report addresses three issues: (1) whether the plea colloquy was sufficient and whether there is an arguable basis to withdraw Raspberry's pleas; (2) whether the trial court erroneously exercised its sentencing discretion; and (3) whether the trial court properly found Raspberry ineligible for earned release programs based on his conviction of a crime in WIS. STAT. ch. 940. The no-merit report thoroughly discusses those issues, including references to relevant statutes, case law, transcripts, and other court documents. This court is satisfied that the no-merit report properly analyzes the issues it raises.

With respect to Raspberry's guilty pleas, the no-merit report analyzes the trial court's compliance with *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986). For instance, the no-merit report notes that the trial court, among other things, told Raspberry that it was not bound by the recommendations of the State and trial counsel. The trial court also reviewed the potential punishment for each crime and the elements of each crime. In addition,

³ Trial counsel told the trial court that Raspberry agreed to both of those amounts.

the trial court found a factual basis for each plea. Appellate counsel concludes that there would be no arguable merit to asserting that Raspberry's pleas were not knowingly, voluntarily, and intelligently entered. Having reviewed the records, including the plea hearing transcript, we agree with appellate counsel's conclusion.

The no-merit report also addresses the sentences that were imposed, providing citations to the sentencing transcript and analyzing the trial court's compliance with applicable case law. Appellate counsel concludes that there would be no arguable merit to assert that the trial court erroneously exercised its sentencing discretion, *see State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentences were excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with these assessments. The trial court thoroughly explained the sentences, which were well within the maximum potential sentences.⁴ *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

Finally, we turn to Raspberry's response to the no-merit report. Raspberry filed a one-page letter asserting that appellate counsel had not consulted with him, met with him, or legally represented him. In response, appellate counsel filed a supplemental report that included a sworn affidavit from appellate counsel listing the sixteen dates that appellate counsel sent written communications to Raspberry, the date that Raspberry sent correspondence to appellate counsel, and the date that appellate counsel met in person with Raspberry at the Kettle Moraine

⁴ Raspberry was facing up to twenty-five years of initial confinement and fifteen years of extended supervision for the second-degree sexual assault, plus up to nine months in jail for each count of fourth-degree sexual assault.

Correctional Institution. We have not received any subsequent communication from Raspberry refuting appellate counsel's affidavit. Based on appellate counsel's affidavit, this court concludes that Raspberry has not raised an issue of arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Raspberry further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved from further representing Michael R. Raspberry in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals