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**DISTRICT II**

May 6, 2020

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

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2019AP720-CRNM State of Wisconsin v. Allen Kenneth Umentum (L.C. #2016CF107)
2019AP721-CRNM State of Wisconsin v. Allen Kenneth Umentum (L.C. #2016CF201)

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).**

In these consolidated appeals, Allen Umentum appeals from judgments convicting him of two counts of retail theft contrary to WIS. STAT. § 943.50(1m)(b) (2015-16) and one count of

felony bail jumping contrary to WIS. STAT. § 946.49(1)(b).[1] Umentum's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and ***Anders v. California***, 386 U.S. 738 (1967). Umentum received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21 (2017-18).

The circuit court withheld sentence and imposed three concurrent terms of three years of probation.[2] The court also imposed a total of $5116 in restitution.

The no-merit report addresses the following possible appellate issues: (1) whether Umentum's no-contest pleas were knowingly, voluntarily, and intelligently entered and had a factual basis; (2) whether the circuit court misused its sentencing discretion; and (3) whether the record demonstrates ineffective assistance of trial counsel. After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit.

The plea colloquy complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The colloquy was thorough and informed Umentum of each of the constitutional

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] The law presumes that sentences are concurrent "in the absence of a statutory or judicial declaration to the contrary." *See* ***State v. Coles***, 208 Wis. 2d 328, 332, 559 N.W.2d 599 (Ct. App. 1997). Because the circuit court did not so specify, we deem the probation terms concurrent.

rights waived by his plea. A no-contest plea waives all nonjurisdictional defects and defenses. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.[3]

The circuit court also engaged in a proper exercise of discretion in imposing probation. ***State v. Heyn***, 155 Wis. 2d 621, 627, 456 N.W.2d 157 (1990) (probation is discretionary with circuit court). The court considered the appropriate factors. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing factors discussed).

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably 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, affirm the judgment of convictions, and relieve Attorney Mark Schoenfeldt of further representation of Umentum in these matters.

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[3] We note that the circuit court did not warn Umentum "that the defendant understands that the court is not bound by the terms of any plea agreement, including recommendations from the district attorney." ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. At the plea hearing, the parties did not inform the court that a sentencing recommendation had been reached even though the plea questionnaire suggested a particular sentencing outcome. At sentencing, the parties agreed that they were making a joint recommendation for concurrent probation, which the circuit court accepted and imposed. We conclude that this issue lacks arguable merit for appeal. ***State v. Johnson***, 2012 WI App 21, ¶¶12-14, 339 Wis. 2d 421, 811 N.W.2d 441.

We also note that during the plea colloquy, the circuit court did not advise Umentum that restitution could be imposed for dismissed and read-in charges. At sentencing, the court imposed restitution for one count of retail theft that was dismissed and read-in. Our review of the record confirms that Umentum was aware of the sentencing consequences that could arise from the dismissed and read-in charges. ***State v. Sulla***, 2016 WI 46, ¶43, 369 Wis. 2d 225, 880 N.W.2d 659 (the entirety of the record may be considered to determine whether the defendant understood the effect of dismissed and read-in charges at sentencing). During the plea colloquy, Umentum specifically admitted the dismissed and read-in retail theft for which the court imposed restitution, and the court advised Umentum that he could face sentencing consequences relating to the dismissed and read-in charges. On this record, we conclude that an appellate challenge to the entry of Umentum's no-contest pleas or to the restitution award would lack arguable merit for appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2017-18) .

IT IS FURTHER ORDERED that Attorney Mark Schoenfeldt is relieved of further representation of Allen Umentum in these matters.

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*