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**DISTRICT IV**

June 25, 2020

To:

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

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2018AP872-CRNM      State of Wisconsin v. Jason J. Hyatt (L.C. # 2016CF395)

Before Nashold, J.<sup>1</sup>

**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).**

Attorney Suzanne Edwards, appointed counsel for Jason Hyatt, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders v. California*, 386 U.S. 738 (1967).

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Counsel provided Hyatt with a copy of the report, and he responded. After my independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal.

Hyatt pled no contest to one count of disorderly conduct. The court imposed a consecutive sentence of 90 days.

The no-merit report addresses whether Hyatt's plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Hyatt was waiving, the factual basis for the plea, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. See *State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Hyatt's response to the no-merit report he raises a number of issues. Hyatt suggests that his mental condition due to incarceration in jail and prison before his plea should be weighed in assessing the voluntariness of his plea. However, he does not provide details of what that mental condition was or how it affected his plea. He does not show a basis to move for plea withdrawal on this ground.

Hyatt argues that the circuit court erred in denying his motion for admission of evidence. However, that issue was forfeited by his no contest plea. A guilty or no contest plea forfeits the right to raise most nonjurisdictional defects and defenses, including claimed violations of constitutional rights. See *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984).

Hyatt raises several issues that were not raised in circuit court and, if they are to be raised now, must be framed as ineffective assistance of counsel. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* Because Hyatt pled no contest, as a practical matter to show prejudice he must prove that, if his attorney had not performed deficiently, Hyatt would not have pled no contest.

Hyatt asserts that his trial counsel should have moved for a change of venue. His response does not provide a sufficient basis to conclude that such a motion would have been successful.

Hyatt asserts that his trial counsel should have filed a speedy trial demand. He appears to imply that he might have gone to trial instead of pleading if the trial had been scheduled sooner. This argument is too speculative to have arguable merit as a showing of prejudice.

Hyatt appears to assert that the filing of charges against him in this case was in reprisal for his filing of a civil suit and for other improper reasons. However, he does not point to any

evidence supporting such an assertion. It would be frivolous to argue that trial counsel's performance was deficient by not raising this issue.

Hyatt raises an issue related to intrastate detainers. He appears to be suggesting that an intrastate detainer should have been filed in this case, but it is not clear why he believes that, or what difference it would have made if one had been filed.

Hyatt suggests that the circuit court's decision to make his sentence consecutive to an existing sentence was an erroneous exercise of discretion. In light of the fact that this disorderly conduct conviction was for a different incident than the earlier conviction, there is no basis to argue that this was an erroneous exercise of discretion.

Hyatt asserts that no "jail credit" was calculated. I assume he is referring to sentence credit for time spent in custody before sentencing. Based on Hyatt's description, it appears that at least some of his incarceration time before sentencing in this case was also time that he was serving the sentence on the earlier conviction. Sentence credit is not available for time serving a sentence because that is not time spent in custody in connection with the later charge. *See* WIS. STAT. § 973.155(1)(a). As to credit for time before his sentencing in the earlier case, that credit would normally have been given in the earlier case, and Hyatt does not suggest that it was not. Therefore, at this time, there appears to be no arguable merit to this issue.

To the extent Hyatt's response raises other issues that I have not specifically addressed, those issues have been reviewed and do not have arguable merit.

My review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Suzanne Edwards is relieved of further representation of Jason Hyatt 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*