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 II

August 26, 2020

To:

Hon. Scott C. Woldt
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Erica L. Bauer
Bauer Law, LLC
1835 E. Edgewood Dr., Ste. 105 #303
Appleton, WI 54913

Christian A. Gossett
District Attorney
P.O. Box 2808
Oshkosh, WI 54903-2808

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

Michael V. Petty 89676
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2019A1744-CRNM State of Wisconsin v. Michael V. Petty
(L.C. #2016CF700)
2020AP136-CRNM State of Wisconsin v. Michael V. Petty
(L.C. #2016CF338)

Before Neubauer, C.J., Gundrum and Davis, 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).

In these consolidated cases, Michael V. Petty appeals from judgments convicting him of two counts of burglary of a building or dwelling. His appellate counsel filed no-merit reports

pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Petty filed responses. Counsel then filed a supplemental no-merit report. After reviewing the records, counsel's reports, and Petty's responses, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

Petty was convicted following no contest pleas to two counts of burglary of a building or dwelling. The charges stemmed from his burglaries of a business and home. Several additional charges were dismissed and read in pursuant to a plea agreement.[2] For his actions, the circuit court imposed an aggregate sentence of seven years and six months of initial confinement and five years of extended supervision.

The no-merit reports address potential issues of (1) whether Petty's pleas were validly entered, (2) whether the circuit court properly exercised its discretion at sentencing, (3) whether the court properly ordered restitution, and (4) whether Petty's trial counsel was effective. This court is satisfied that the no-merit reports correctly analyze these issues as without merit.

As noted, Petty filed responses to the no-merit reports. In them, he complains that the circuit court failed to establish a factual basis for the pleas. He also complains that the court failed to discuss the impact of the dismissed and read-in offenses. Additionally, he faults the court for not fully assessing his capacity to understand the issues at the plea hearing. According to Petty, he did not understand the nature of the offenses, the penalties he was facing, or the

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

[2] The dismissed and read-in charges were three counts of burglary of a building or dwelling, felony bail jumping, and disorderly conduct. Several uncharged burglary offenses were also read in.

constitutional rights he was waiving. We are not persuaded that Petty's responses present an issue of arguable merit.

First, when a plea is part of a plea agreement, a circuit court "need not go to the same length to determine whether the facts would sustain the charge as it would where there is no negotiated plea." ***State v. Sutton***, 2006 WI App 118, ¶16, 294 Wis. 2d 330, 718 N.W.2d 146 (citation omitted). Here, the court said that it found a factual basis for the negotiated pleas, and the records (specifically, the criminal complaints) support that finding.

Second, while our supreme court has emphasized that circuit courts *should* provide certain warnings regarding read-in offenses, *see* ***State v. Straszkowski***, 2008 WI 65, ¶¶93, 97, 310 Wis. 2d 259, 750 N.W.2d 835, those warnings have not been made a mandatory part of the plea colloquy. In any event, there is no indication that Petty was harmed by the lack of warnings.[3]

Finally, in its plea colloquy, the circuit court specifically addressed the nature of the offenses, the penalties Petty was facing, and the constitutional rights he was waiving. Petty affirmatively indicated that he understood those issues, and he cannot take an inconsistent

[3] As noted in the supplemental no-merit report, the circuit court could have lawfully considered Petty's alleged involvement in the additional offenses regardless of whether they were read in. *See* ***State v. Sulla***, 2016 WI 46, ¶32, 369 Wis. 2d 225, 880 N.W.2d 659. Furthermore, Petty was aware from both the plea hearing and plea questionnaire/waiver of rights form that he could be required to pay restitution on read-in offenses.

position now. *See* ***State v. Michels***, 141 Wis. 2d 81, 97-98, 414 N.W.2d 311 (Ct. App. 1987). There is nothing in the record to suggest that Petty did not mean what he said to the court.[4]

Our review of the records discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit reports, affirms the judgments of conviction, and discharges appellate counsel of the obligation to represent Petty further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of further representation of Michael V. Petty in these appeals. *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

[4] Petty answered all questions appropriately during the plea colloquy. Moreover, on the plea questionnaire/waiver of rights form, he denied receiving treatment for a mental illness/disorder or having had any alcohol, medications, or drugs within the last twenty-four hours. Finally, Petty was well-versed in the criminal justice system. His criminal history spanned several decades, and he had previously pled to and been convicted of burglary numerous times.