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**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](http://www.wicourts.gov)

**DISTRICT IV**

March 11, 2021

To:

Hon. Michael A. Haakenson  
Circuit Court Judge  
51 S. Main St.  
Janesville, WI 53545

Jacki Gackstatter  
Clerk of Circuit Court  
Rock County Courthouse  
51 S. Main St.  
Janesville, WI 53545

Mason C. Braunschweig  
Assistant District Attorney  
51 S. Main St.  
Janesville, WI 53545

Jennifer Lohr  
Attorney  
Lohr Law Office LLC  
583 D'Onofrio Dr., Suite 1011  
Madison, WI 53719

Jeffrey Allen Caples  
14408 W. State Rd. Hwy 81  
Brodhead, WI 53520

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

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

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2019AP1439-CRNM      State of Wisconsin v. Jeffrey Allen Caples (L.C. # 2016CF1766)

Before Kloppenburg, Graham, and Nashold, 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).**

Jeffrey Caples appeals judgments convicting him of one felony and one misdemeanor. Attorney Jennifer Lohr has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2019-20);<sup>1</sup> *see also Anders v. California*, 386 U.S. 738, 744 (1967).

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version, unless otherwise noted.

The no-merit report addresses the validity of Caples's pleas and whether the circuit court erroneously exercised its sentencing discretion. Caples was sent a copy of the report and has not filed a response. Upon reviewing the entire record and the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. To withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of a defect in the colloquy or a manifest injustice here.

Caples entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Caples pleading guilty to fleeing or eluding an officer and pleading no contest to obstructing an officer, the State agreed to dismiss other charges. The State also agreed to a joint sentencing recommendation of one year of initial confinement and two years of extended supervision on the fleeing count, and nine months of jail time on the obstruction count, to be served concurrently.

The circuit court conducted a standard plea colloquy. It inquired into Caples's ability to understand the proceedings and the voluntariness of his plea decisions, and it further explored his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. See WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The

court made sure that Caples understood that it would not be bound by any sentencing recommendations. In addition, Caples provided the court with a signed plea questionnaire. Caples indicated to the court that he understood the information explained on that form, and he does not now claim otherwise. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The parties stipulated that the complaint provided a sufficient factual basis for the pleas. Caples indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Caples has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Caples's sentence also would lack arguable merit. Where a defendant affirmatively joins or approves a sentence recommendation that the circuit court adopts, the defendant cannot attack the sentence on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced Caples consistent with the joint recommendation, and imposed sentences within the legal maximums. In any event, it cannot reasonably be argued that Caples's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. See *State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jennifer Lohr is relieved of any further representation of Jeffrey Caples in this matter pursuant to 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*