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**DISTRICT I**

July 7, 2021

To:

Hon. Jeffrey A. Wagner  
Circuit Court Judge  
Electronic Notice

Criminal Appeals Unit  
Department of Justice  
Electronic Notice

John Barrett  
Clerk of Circuit Court  
Electronic Notice

James A. Love 177408  
Racine Correctional Inst.  
P.O. Box 900  
Sturtevant, WI 53177-0900

John D. Flynn  
Electronic Notice

John P. Mueller  
Electronic Notice

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

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2020AP969-CRNM      State of Wisconsin v. James A. Love (L.C. # 2018CF2107)

Before Dugan, Donald 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).**

James A. Love appeals a judgment of conviction for third-degree sexual assault. Attorney John P. Mueller, appointed counsel for Love, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v.*

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

*California*, 386 U.S. 738 (1967). Love was sent a copy of the report and has filed a response.<sup>2</sup> Upon consideration of the report, the response, and an independent review of the record as mandated by *Anders*, we conclude there is no arguable merit to any issue that could be raised on appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the allegations in the criminal complaint, Love sexually assaulted V.D.L., who suffered from a cognitive disability and was unable to live on her own. Love entered her room, removed her pants, and put his mouth on her vagina. V.D.L. reported that she did not want to have sexual contact with Love but felt that, if she did not agree to what he wanted, he would “just take it,” meaning force her to have sexual intercourse.

Love entered into a plea agreement, under which he pled no-contest to one count of third-degree sexual assault. An additional charge for second-degree sexual assault was dismissed and read in. As part of the plea agreement, the parties remained free to argue for the proper sentence. At sentencing, the State recommended the maximum prison term of ten years. The circuit court agreed with the State’s recommendation and imposed a bifurcated prison term consisting of five years of initial confinement and five years of extended supervision.

The no-merit report addresses whether Love’s no-contest plea was knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The circuit court’s plea colloquy, including the court’s references to the plea questionnaire and waiver of rights form, sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v.*

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<sup>2</sup> Love filed an initial response on June 24, 2020, and an additional response on July 20, 2020. We have considered both documents together as Love’s response.

*Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, relating to the nature of the charge, the maximum prison term, the rights Love was waiving, and other matters. We see no other ground on which Love might challenge his plea.

In his response to the no-merit report, Love raises the issue of whether his plea was not knowing and voluntary because he suffers from a traumatic brain injury that affects his memory and cognition. We see no arguable merit to this issue. The question of Love’s competency was raised prior to the entry of Love’s plea. The psychologist who evaluated Love determined that Love met the diagnostic criteria for “malingered,” that Love was feigning memory loss, and that Love was also feigning a lack of legal knowledge. The psychologist further determined that Love did not lack substantial capacity to understand court procedures or to assist in his defense. Based on the psychologist’s evaluation, the circuit court found that Love was competent to proceed. We see no non-frivolous basis for Love to challenge this finding.<sup>3</sup>

The no-merit report next addresses whether the circuit court imposed an illegal sentence or otherwise erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The circuit court’s sentencing remarks were brief, but they show that the court adequately considered the mandatory sentencing factors along with other permissible factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any impermissible factors. Among the aggravating factors that the court reasonably considered were Love’s prior conviction for sexual assault of a child and

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<sup>3</sup> The bulk of Love’s response to the no-merit report consists of assertions relating to his alleged traumatic brain injury and its cognitive effects. For the reasons explained above, we see no arguable basis for Love to challenge his plea on this basis. Further, we see no other assertions in Love’s response that could support any other arguably meritorious issue.

Love's apparent tendency to prey on vulnerable members of the population. Under the circumstances, Love could not plausibly argue that the maximum ten-year sentence was so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other basis for Love to challenge his sentence.

Our 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 John P. Mueller is relieved of any further representation of James A. Love 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*