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**DISTRICT III**

October 5, 2021

To:

Hon. Michael A. Schumacher  
Circuit Court Judge  
Electronic Notice

Susan Schaffer  
Clerk of Circuit Court  
Eau Claire County Courthouse  
Electronic Notice

Roberta A. Heckes  
Electronic Notice

Gary King  
Electronic Notice

Davy L. Cole 587638  
Stanley Correctional Inst.  
100 Corrections Dr.  
Stanley, WI 54768

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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2019AP62-CRNM      State of Wisconsin v. Davy L. Cole (L. C. No. 2017CF1061)

Before Stark, P.J., Hruz and Gill, 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).**

Davy Cole appeals from two judgments convicting him of two counts of burglary. Attorney Roberta Heckes has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> The no-merit report sets forth the procedural history of the case and addresses Cole's pleas and sentences, as well as his trial counsel's performance.

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

Cole was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that counsel shall be allowed to withdraw and that the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Cole with six counts of burglary and three counts of solicitation of arson, all arising out of a string of commercial burglaries and related residential and vehicular fires that had been set to divert law enforcement. Cole pled no contest to two counts of burglary of a building, each as a party to a crime. In exchange, the State moved to dismiss and read in the remaining charges. It further agreed to request a presentence investigation report (PSI) and to cap its recommendation to five years' initial confinement on each count, to be served concurrently, with no recommendation as to extended supervision. The circuit court accepted Cole's pleas after conducting a full plea colloquy and reviewing a signed plea questionnaire and waiver of rights form with attached jury instructions.

The circuit court held a sentencing hearing where the parties addressed the PSI and restitution and also provided recommendations in accordance with the plea agreement. Cole exercised his right of allocution. After arguments from the parties, the court discussed proper sentencing factors, including the gravity of the offenses, the need to protect the public, and Cole's character. The court then sentenced Cole to four years' initial confinement and five years' extended supervision on one of the burglary counts, with 428 days of sentence credit, and withheld sentence and placed Cole on probation for three years on the other count. It also ordered \$67,547 in restitution.

We agree with counsel's description, analysis and conclusion that any challenge to the pleas, sentences, or Cole's trial counsel's performance would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Roberta Heckes is relieved of any further representation of Davy Cole 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*