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**DISTRICT III**

November 16, 2021

To:

Hon. Steven P. Anderson  
Circuit Court Judge  
Electronic Notice

Shannon Anderson  
Clerk of Circuit Court  
Washburn County Courthouse  
Electronic Notice

Winn S. Collins  
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Leonard D. Kachinsky  
Electronic Notice

Aaron Bruce Marcoux  
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Garry Kendall Lyga 669694  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2019AP1396-CRNM      State of Wisconsin v. Garry Kendall Lyga (L. C. No. 2017CF33)

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).**

Counsel for Garry Lyga has filed a no-merit report concluding no grounds exist to challenge Lyga's convictions for four counts of possessing child pornography, contrary to WIS. STAT. § 948.12(1m) (2019-20).<sup>1</sup> Lyga was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue

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

that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Lyga with ten counts of possessing child pornography. According to the complaint, the Wisconsin Division of Criminal Investigation was informed that Google had identified an account with “four files of interest” linked to username “Garry” along with primary and secondary email addresses. An additional nine images of what Google believed to be “children engaged in sexually explicit conduct” were linked to the same name and email addresses, and an IP address registered to a home in Spooner, Wisconsin. Law enforcement subsequently executed a search warrant at the home where Lyga lived with roommates. Officers found a hard drive containing approximately sixty-five files of what law enforcement described as “children engaged in sexually explicit conduct or nude infant females with their vaginas exposed.” Lyga was ultimately arrested after a non-custodial interview in which Lyga made several inculpatory statements in an effort to “get this off his chest.”

At the outset of the criminal proceedings, the circuit court granted defense counsel’s request for a competency examination. An examining psychologist submitted a report opining that Lyga was competent to stand trial and, after a hearing, the court found Lyga competent to proceed.

In exchange for his guilty pleas to four of the charged offenses—each of which carried a mandatory minimum term of three years’ initial confinement under WIS. STAT. § 939.617(1)—the State agreed to recommend that the circuit court dismiss and read in the remaining charges, and also read in any uncharged images and videos for sentencing purposes. The State also agreed to recommend concurrent sentences for the first three counts, though it remained free to

recommend a consecutive sentence for the fourth count. The defense was free to argue for all concurrent sentences. Out of a maximum possible 100-year sentence, the court imposed concurrent eighteen-year sentences, consisting of eight years' initial confinement and ten years' extended supervision.

Although the no-merit report does not address the possibility of a pretrial suppression motion or the circuit court's competency determination, nothing in the record supports a nonfrivolous claim that Lyga's trial counsel was ineffective by failing to pursue a pretrial motion to suppress evidence discovered during execution of the search warrant. We likewise conclude there is no arguable merit to challenge the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." *State v. Byrge*, 2000 WI 101, ¶28, 237 Wis. 2d 197, 614 N.W.2d 477. To determine legal competency, the circuit court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *Id.*, ¶¶30-31. A circuit court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶46.

An examining psychologist submitted a report opining to a reasonable degree of professional certainty that Lyga did not lack the "substantial capacity to understand his charges or to assist an attorney in his defense," outlining her clinical findings and the reasoning behind her opinion. At the competency hearing, the parties stipulated to the examiner's findings, and Lyga agreed he was competent to proceed. Based on the psychologist's report, the parties' stipulation, and Lyga's agreement with the report, the circuit court found Lyga competent to proceed. The record supports the court's determination.

The no-merit report addresses whether Lyga knowingly, intelligently and voluntarily entered his guilty pleas and whether the circuit court properly exercised its sentencing discretion. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to Lyga's pleas or sentences would lack arguable merit. The no-merit report sets forth an adequate discussion of these potential issues to support the no-merit conclusion, and we need not address them further. Our independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of his obligation to further represent Garry Kendall Lyga 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*