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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  
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**DISTRICT III**

December 14, 2021

To:

Hon. Shaughnessy Murphy  
Circuit Court Judge  
Electronic Notice

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

Gary King  
Electronic Notice

Dennis Schertz  
Electronic Notice

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

Thomas D'Lamatter  
Eau Claire County Jail  
710 2nd Avenue  
Eau Claire, WI 54703

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

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2019AP1111-CRNM      State of Wisconsin v. Thomas D'Lamatter  
(L. C. No. 2017CM720)

Before Stark, P.J.<sup>1</sup>

**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 Thomas D'Lamatter has filed a no-merit report concluding there is no basis to challenge D'Lamatter's convictions for criminal damage to property and disorderly conduct. D'Lamatter was advised of his right to respond and has failed to do so. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

there are no issues of arguable merit that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

At the commencement of his trial, D'Lamatter entered a plea to the disorderly conduct count, and the trial proceeded on the criminal damage to property count. D'Lamatter's former girlfriend testified that in the middle of the night she observed D'Lamatter's reflection in her second-story bedroom window, and that she heard him ripping the screen from the window.<sup>2</sup> She then called 911. Under cross-examination, she admitted there was no fire escape by her bedroom window. She also admitted not knowing how D'Lamatter would have gotten access to her window that night.

A police officer who responded to the dispatch testified that he arrived on the scene within sixty to ninety seconds. Dispatch had advised the officer of a report of a prowler, and that the suspect was D'Lamatter. He was also advised that the public space camera at that location showed D'Lamatter getting into a vehicle parked in the Kwik Trip parking lot behind the apartment building. As he approached, the officer observed the vehicle back out of a parking space and attempt to drive away. The officer recognized D'Lamatter as a passenger in the rear seat of the vehicle. The officer stopped the vehicle, made contact, and asked D'Lamatter where he had been just prior to being stopped. D'Lamatter pointed toward the apartment building where his ex-girlfriend lived, said he was coming from there, and that he was going to get a television. Later, however, D'Lamatter told the officer he had been coming from the Kwik Trip at the other end of the parking lot.

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<sup>2</sup> D'Lamatter had just broken up with the victim several days prior to the incident.

Under cross-examination, the officer conceded it would not be possible to access the victim's bedroom window by means of the fire escape on the apartment building, but he thought it was possible to get to that window from the roof. A second officer responding to the call also explained how someone could access the window by going up a set of stairs and standing on a railing to get on the roof, from which the window could be reached. The building manager also testified that a person could access the bedroom window by means of the railing on the staircase that led up one side of the building.

The second officer responding to the call testified that he met with the victim, who told him that she observed D'Lamatter outside of her window attempting to enter the apartment. The officer went to the bedroom and observed the window screen had been torn or cut. Two pocket knives were located on D'Lamatter.

At the conclusion of the trial, the jury returned a verdict finding D'Lamatter guilty of criminal damage to property. After the jury was excused, the circuit court proceeded to sentencing. The State recommended two years' probation, consecutive to a sentence D'Lamatter was already serving. Defense counsel then explained to the court that her client was not interested in probation and desired the court to sentence him to jail. After D'Lamatter confirmed that he did not want probation, the court sentenced him to ninety days' jail on both counts, concurrently.

The no-merit report addresses whether the disorderly conduct plea was knowingly, intelligently, and voluntarily entered; whether the evidence was sufficient to sustain the jury's finding of guilt on the criminal damage to property charge; whether D'Lamatter received effective assistance of counsel; and whether the circuit court erroneously exercised its sentencing

discretion. This court is satisfied that the no-merit report properly analyzes the issues raised, and we will not address them further. Our independent review of the record discloses no other potential issues for appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of further representing Thomas D'Lamatter 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*