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DISTRICT III

March 22, 2022

To:

Hon. Vincent R. Biskupic
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

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Pao Yang 592083
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You are hereby notified that the Court has entered the following opinion and order:

2020AP875-CRNM State of Wisconsin v. Pao Yang (L. C. No. 2019CF560)

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 Pao Yang has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Yang's convictions for one count of fleeing/eluding an officer and one count of hit and run. Yang 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

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

there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Yang with fleeing/eluding an officer, obstructing an officer, and hit and run. The complaint alleged that officers were attempting to locate a male suspect with an outstanding felony warrant who they believed might be inside a particular apartment building. An officer saw three men and a woman exit the building. Two of the men—one of whom matched the description of the suspect—got into a red Honda and began to drive away. The officer followed the red Honda and activated his vehicle's emergency lights, attempting to initiate a traffic stop. The red Honda did not stop but instead drove away at a high rate of speed. When the red Honda reached an area where traffic prevented it from driving any farther, the driver and passenger ran out of the vehicle. The driver had apparently failed to place the red Honda in park, however, and the vehicle moved forward, striking and damaging another vehicle.

An officer followed the driver of the red Honda, who was later identified as Yang. Yang attempted to hide inside a business, but he then ran back outside and continued to evade law enforcement. Several officers eventually caught up to Yang and arrested him.

Pursuant to a plea agreement, Yang agreed to enter no-contest pleas to the fleeing/eluding charge and the hit-and-run charge. In exchange, the State agreed to recommend that the

obstructing charge be dismissed and read in.² Following a plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Yang had completed, the circuit court accepted Yang's no-contest pleas and found him guilty. The court concluded that Yang's pleas were freely, voluntarily, and intelligently made. The court also found, based on Yang's stipulation, that the criminal complaint provided an adequate factual basis for Yang's pleas.

The circuit court ultimately sentenced Yang to 320 days in jail on the fleeing/eluding charge and eighty days in jail on the hit-and-run charge, consecutive to one another and to any other sentence. At defense counsel's request, the court later amended Yang's judgment of conviction to grant him 107 days of sentence credit.

The no-merit report addresses: whether Yang's no-contest pleas were knowing, intelligent, and voluntary; and whether the circuit court erroneously exercised its discretion when sentencing Yang. Having independently reviewed the record, we agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

² The no-merit report indicates that in speaking to Yang, appellate counsel learned that Yang believed the plea agreement also required the State to recommend fifteen months' initial confinement and fifteen months' extended supervision on one of the counts to which he pled and a term of probation on the other count. The record does not clearly show that the State agreed to recommend a specific sentence on either count. Regardless, the record shows that during Yang's sentencing hearing, the State did recommend fifteen months' initial confinement and fifteen months' extended supervision on the fleeing/eluding count and a withheld sentence with a one-year term of probation on the hit-and-run count. As such, Yang was not deprived of any benefit to which he believed he was entitled under the plea agreement. Any claim for plea withdrawal on this basis would therefore lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Timothy O'Connell is relieved of further representing Pao Yang in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals