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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**

March 29, 2022

To:

Hon. R. Michael Waterman  
Circuit Court Judge  
Electronic Notice

Kristi Severson  
Clerk of Circuit Court  
St Croix County Courthouse  
Electronic Notice

Karl E. Anderson  
Electronic Notice

Winn S. Collins  
Electronic Notice

Roberta A. Heckes  
Electronic Notice

Laura Lynne Zimmerman  
220 Lincoln Street  
River Falls, WI 54022

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

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2019AP1339-CRNM      State of Wisconsin v. Laura Lynne Zimmerman  
(L. C. No. 2015CF475)

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).**

Laura Zimmerman appeals from a felony conviction and sentence. 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 Zimmerman's plea, the adequacy of counsel's performance, the revocation of a deferred entry of a judgment of conviction (DJOC) agreement, and Zimmerman's sentence.

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

Zimmerman was advised of her right to respond to the no-merit report, but she 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 there are no arguably meritorious issues for appeal.

The State charged Zimmerman with theft of movable property as a Class H felony based upon special facts—namely, that the victim was an individual at risk because he was over the age of sixty. Zimmerman entered into an agreement with the State pursuant to which she would plead no contest to the felony theft charge and also would plead guilty to an added misdemeanor theft charge, in exchange for a two-year period of deferred entry of judgment on the felony theft charge during which time she would pay restitution.<sup>2</sup> The circuit court accepted Zimmerman’s plea on the felony count after conducting a plea colloquy and reviewing a signed plea questionnaire and waiver of rights form, but it stayed adjudication of guilt in accordance with the DJOC agreement.

A day or two before the two-year term referenced in the DJOC agreement ended,<sup>3</sup> the State moved to revoke the agreement because Zimmerman had failed to pay the full amount of restitution ordered. After Zimmerman failed to appear at the revocation hearing, the circuit court took judicial notice that Zimmerman’s probation on the misdemeanor count had been extended based upon Zimmerman’s stipulation that she had failed to pay the required amount of

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<sup>2</sup> We note that the appellate record does not contain an amended Information with the additional charge. We do not address that issue, however, because Zimmerman has not appealed the misdemeanor theft conviction.

<sup>3</sup> The motion to revoke the DJOC agreement was signed on September 26, 2018, and stamped as filed on September 27, 2018.

restitution, determined that Zimmerman had thereby also failed to satisfy the conditions of the DJOC agreement, revoked the DJOC agreement, adjudicated Zimmerman guilty on the felony theft count, issued a bench warrant, and declared that sentencing would be scheduled after Zimmerman was taken into custody.

The circuit court subsequently held a sentencing hearing at which the parties first addressed whether there was a basis for the court to reconsider the revocation of the DJOC agreement. Zimmerman argued, first, that it was too late to revoke the agreement and, second, that the court could not revoke the agreement without Zimmerman's presence at the revocation hearing so that she could have an opportunity to challenge her ability to pay. The court agreed to reconsider the revocation on its merits based upon Zimmerman's absence from the revocation hearing, but it concluded that the terms of the DJOC agreement did not require that any revocation occur within the two-year period. Instead, the DJOC agreement provided that either party could move to dismiss the felony theft charge after two years in the event that the terms of the DJOC agreement were satisfied. The court further concluded that an alleged inability to pay did not constitute a defense to a failure to satisfy the terms of a DJOC agreement, which the court viewed as a contract between the parties. The court then proceeded to sentencing. In accordance with the recommendations of both parties, the court withheld sentence and placed Zimmerman on probation for a period of three years.

We agree with counsel's description, analysis and conclusion that any challenge to Zimmerman's plea, the revocation of the DJOC agreement, Zimmerman's sentence, or counsel's performance would lack arguable merit. In particular, we note that a DJOC agreement is entered as part of plea agreement. *State v. Wollenberg*, 2004 WI App 20, 268 Wis. 2d 810, 674 N.W.2d 916 (2003). A plea agreement is analogous to a contract, and contract principles may be used to

interpret it. *State v. Deilke*, 2004 WI 104, 274 Wis. 2d 595, 628 N.W.2d 945. Applying a contract analysis, we agree with the circuit court that Zimmerman’s ability to pay restitution was not relevant to the determination of whether Zimmerman had satisfied the terms of the DJOC agreement—which plainly required Zimmerman to pay restitution as directed within two years, without any conditions. 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*. Accordingly, Attorney Roberta Heckes shall be allowed to withdraw as counsel, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Roberta Heckes is relieved of any further representation of Laura Zimmerman 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*