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**DISTRICT II**

April 6, 2022

To:

Hon. Timothy M. Van Akkeren  
Reserve Judge  
Electronic Notice

Marylou Mueller  
Clerk of Circuit Court  
Ozaukee County Justice Center  
Electronic Notice

Brian Borkowicz  
Electronic Notice

Adam Y. Gerol  
Electronic Notice

Winn S. Collins  
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Jerome M. Garbe  
3322 W. Lakefield Dr.  
Milwaukee, WI 53215

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

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2020AP1671-CRNM	State of Wisconsin v. Jerome M. Garbe (L.C. #2018CF191)
2020AP1672-CRNM	State of Wisconsin v. Jerome M. Garbe (L.C. #2018CF299)

Before Gundrum, P.J., Grogan and Kornblum, 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).**

In these consolidated appeals, Jerome M. Garbe appeals from judgments convicting him of theft contrary to WIS. STAT. § 943.20(1)(a) (2017-18), bail jumping contrary to WIS. STAT. § 946.49(1)(a) (2017-18), and attempted theft contrary to WIS. STAT. §§ 943.20(1)(a) and 939.32 (2017-18). Garbe's appellate counsel filed no-merit reports pursuant to WIS. STAT. RULE 809.32

(2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Garbe received a copy of the reports and was advised of his right to file a response. He has not done so. Upon consideration of the reports and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit reports address the following possible appellate issues: (1) whether Garbe’s no contest pleas were knowingly, voluntarily and intelligently entered; (2) whether the circuit court misused its sentencing discretion or relied upon inaccurate information or an improper factor at sentencing; and (3) whether the amount of restitution awarded in No. 2020AP1671-CRNM was proper. After reviewing the record, we conclude that counsel’s no-merit reports properly analyze these issues and correctly determine that these issues lack arguable merit.

During the plea colloquy, Garbe affirmed that he understood all matters relating to entering his no contest pleas. Based on the record before this court, any challenge to the entry of Garbe’s no contest pleas would lack arguable merit for appeal. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794 (plea colloquy requirements); *State v. Howell*, 2007 WI 75, ¶7, 301 Wis. 2d 350, 734 N.W.2d 48 (allegations required to seek plea withdrawal); *State v. Pegeese*, 2019 WI 60, ¶¶37, 40-41, 387 Wis. 2d 119, 928 N.W.2d 590 (record shows defendant’s understanding of matters to be addressed during plea colloquy). A “no contest plea waives all nonjurisdictional defects and defenses.” *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

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

The circuit court withheld sentence on all counts and imposed two-year terms of probation with 150 days in jail as condition time. The circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing objectives and factors discussed). Nothing in the record suggests that the circuit court considered inaccurate information or improper factors at sentencing, and Garbe has not responded to counsel's no-merit reports to raise such a claim. There would be no arguable merit to a challenge to the sentencing.

The circuit court imposed restitution in the amount of \$11,258. The court considered Garbe's claim that he was indigent but noted that Garbe's probation required him to work such that he could pay restitution. Furthermore, the court granted Huber privileges to Garbe so that he could work while serving his condition time. There would be no arguable merit to a challenge to the circuit court's discretionary decision to impose restitution. *State v. Fernandez*, 2009 WI 29, ¶20, 316 Wis. 2d 598, 764 N.W.2d 509.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit reports, affirm the judgments of conviction and relieve Attorney Brian Borkowicz of further representation of Garbe in these matters.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Brian Borkowicz is relieved of further representation of Jerome M. Garbe in these matters.

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*