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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  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

April 27, 2022

To:

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Circuit Court Judge  
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Hon. Emily S. Mueller  
Circuit Court Judge  
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Patricia J. Hanson  
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Samuel A. Christensen  
Clerk of Circuit Court  
Racine County Courthouse  
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Pamela Moorshead  
Electronic Notice

Thomas C. Macemon, #438428  
Stanley Correctional Inst.  
100 Corrections Drive  
Stanley, WI 54768

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

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2020AP995-CRNM      State of Wisconsin v. Thomas C. Macemon (L.C. #2015CF1188)

Before Gundrum, P.J., Neubauer and Grogan, 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 Thomas C. Macemon has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),<sup>1</sup> concluding that no grounds exist to challenge Macemon's conviction for homicide by operation of a vehicle with a detectable amount of a restricted controlled

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

substance in the blood.<sup>2</sup> Macemon 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 that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Macemon with one count of homicide by negligent operation of a vehicle (Count 1) and one count of homicide by operation of a vehicle with a detectable amount of a restricted controlled substance in the blood (Count 2). Both charges stemmed from the death of thirteen-year-old S.E.D. The complaint alleged that on August 9, 2015, Macemon was driving northbound on Middle Road in the Village of Caledonia when his vehicle crossed the center line and struck S.E.D., who was walking southbound on the opposite side of the road. Following the crash, Macemon told law enforcement that he had consumed a shot of Hennessey earlier that day and had also smoked marijuana and snorted a crushed Xanax pill. A blood draw subsequently revealed that Macemon had marijuana, Oxycodone, and Xanax in his system at the time of the crash.

Macemon entered guilty pleas to both of the charges against him. There was no plea agreement, and both sides were therefore free to argue at sentencing. Following a plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Macemon had completed, the circuit court accepted Macemon's guilty pleas, concluding that they were freely, knowingly,

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<sup>2</sup> Although Attorney Leon W. Todd submitted the no-merit report, Attorney Pamela Moorshead was later substituted as counsel in this matter.

and voluntarily made. Macemon confirmed that the facts stated in the criminal complaint were true, and the court found that those facts provided a factual basis for Macemon's pleas.<sup>3</sup>

The circuit court subsequently sentenced Macemon to five years' initial confinement and five years' extended supervision on Count 1—the maximum sentence for that charge. On Count 2, the court again imposed the maximum sentence—fifteen years' initial confinement and ten years' extended supervision—consecutive to Macemon's sentence on Count 1. The court asserted a belief that Macemon was statutorily eligible for the Substance Abuse Program (SAP) and the Challenge Incarceration Program (CIP). However, the court exercised its discretion to order that Macemon would be eligible for those programs only after he had served thirteen years of initial confinement.

Macemon subsequently moved for postconviction relief, raising three arguments. First, Macemon argued that his convictions were multiplicitous and violated his constitutional right to be free from double jeopardy. He therefore asked the circuit court to vacate his conviction and sentence on Count 1. Second, Macemon asked the court to modify the initial confinement portion of his sentence on Count 2 from fifteen years to thirteen years based on the existence of a new factor—namely, the fact that he was statutorily ineligible for SAP and CIP. Third, in the event that the court denied his request for sentence modification, Macemon sought resentencing on Count 2 on the grounds that his sentence on that count was imposed in violation of double jeopardy, was imposed in violation of his right of allocution, and was based on an inaccurate belief that he was statutorily eligible for SAP and CIP.

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<sup>3</sup> The Honorable Emily S. Mueller presided over Macemon's plea hearing and his original sentencing hearing.

Following a nonevidentiary hearing, the circuit court granted Macemon's postconviction motion in part and denied the motion in part.<sup>4</sup> The court agreed that Macemon's convictions on Counts 1 and 2 were multiplicitous. It determined, based on *State v. Buck*, 210 Wis. 2d 115, 130-31, 565 N.W.2d 168 (Ct. App. 1997), that the proper remedy for that violation was to vacate Macemon's conviction and sentence on Count 1 and order resentencing on Count 2. Because the court had granted Macemon resentencing on Count 2, it concluded that his request for sentence modification was moot, and it therefore denied that portion of his postconviction motion.

The circuit court subsequently resentenced Macemon on Count 2 to fifteen years' initial confinement and ten years' extended supervision—the maximum sentence on that charge. After initially granting Macemon 558 days of sentence credit, the court later amended his judgment of conviction to award him 1,410 days of credit.

The no-merit report addresses: (1) whether Macemon knowingly, intelligently, and voluntarily entered his guilty plea to Count 2; (2) whether the circuit court erred by denying Macemon's postconviction motion for sentence modification and instead granting him resentencing on Count 2; and (3) whether the court erroneously exercised its discretion when resentencing Macemon. Having independently reviewed the record, we agree with counsel's description, analysis, and conclusion that any challenge to Macemon's conviction or sentence on these grounds would lack arguable merit. Accordingly, we do not address these issues further.

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

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<sup>4</sup> The Honorable Faye M. Flancher entered the order granting in part and denying in part Macemon's postconviction motion. Judge Flancher also presided over Macemon's resentencing hearing.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of her obligation to further represent Thomas C. Macemon 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*