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**DISTRICT III**

June 1, 2022

To:

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Electronic Notice

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Kewaunee County Courthouse  
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Timothy T. O'Connell  
Electronic Notice

Avery T. Vanderwegen 614211  
Oshkosh Correctional Inst.  
P. O. Box 3310  
Oshkosh, WI 54903-3310

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

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2020AP44-CRNM      State of Wisconsin v. Avery T. Vanderwegen  
2020AP149-CRNM      (L. C. Nos. 2018CF64, 2018CF48)

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).**

Avery Vanderwegen appeals from a burglary conviction and an amended conviction for second-degree sexual assault.<sup>1</sup> Attorney Timothy O'Connell has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).<sup>2</sup> The no-merit report

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<sup>1</sup> The notice of appeal also states that Vanderwegen is appealing a postconviction order, but that order granted him relief by stipulation of the parties. Therefore, the postconviction order is not before us in these appeals.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

sets forth the procedural history of the case and addresses Vanderwegen's pleas and terms of probation. Vanderwegen was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire records 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 Vanderwegen in Kewaunee County case No. 2018CF48 with second-degree sexual assault of a mentally ill victim. Several months later, the State charged Vanderwegen in Kewaunee County case No. 2018CF64 with one count of burglary of a building, one count of misdemeanor theft, and one count of criminal damage to property. Vanderwegen eventually pled no contest to the sexual assault and burglary counts. In exchange, the State dismissed and read in the remaining two counts in case No. 2018CF64 (as well as three misdemeanor counts of issuing worthless checks in a third case not at issue in these appeals), and agreed to jointly recommend probation with conditional jail time, plus restitution. The circuit court accepted Vanderwegen's pleas after conducting a plea colloquy and reviewing a signed plea questionnaire and waiver of rights form. Neither party requested a presentence investigation report.

The circuit court proceeded directly to sentencing, and the parties provided arguments in accordance with the joint recommendation set forth in the plea agreement. After hearing from the parties, the court discussed the proper sentencing factors, including the gravity of the offenses and the character of the offender, and related those factors to proper sentencing objectives. The court emphasized the objectives of rehabilitation and the need to protect the public, both in general and with vulnerable individuals in particular. The court also considered punishment, restitution, and deterrence. The court then accepted the parties' joint

recommendation, withheld sentence, and placed Vanderwegen on concurrent five-year terms of probation on each count. The court further imposed nine months' conditional jail time with work-release eligibility on the sexual assault count, but stayed six months of that time subject to the probation agent's discretion or further order of the court. The court also ordered \$630.89 in restitution and other conditions agreed upon by the parties.

In response to a postconviction motion and stipulation of the parties, the circuit court subsequently amended the judgment of conviction on the sexual assault count to clarify that Vanderwegen's probation agent could merely recommend that portions of the stayed conditional jail time be served; only the court could so order.

We agree with counsel's description, analysis, and conclusion that any challenge to the pleas or terms of probation would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal.<sup>3</sup> We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgments of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

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<sup>3</sup> We note that Vanderwegen's pleas forfeited his right to raise other nonjurisdictional defects and defenses, including claimed violations of his constitutional rights. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

IT IS FURTHER ORDERED that Attorney Timothy O'Connell is relieved of any further representation of Avery Vanderwegen in these matters 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*