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**DISTRICT IV**

July 21, 2022

To:

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Marquette County Courthouse  
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Charles James Pickle 538540  
Jackson Correctional Inst.  
P.O. Box 233  
Black River Falls, WI 54615-0233

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

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2021AP679-CRNM      State of Wisconsin v. Charles James Pickle (L.C. # 2017CF102)

Before Blanchard, P.J., Kloppenburg, and Graham, 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).**

Charles James Pickle appeals a judgment of conviction entered upon his plea of no-contest to armed robbery as a repeat offender. Appellate counsel, Attorney Erica L. Bauer, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> Pickle filed a response. We have considered the no-merit report and Pickle's response, and we have conducted an independent review of the record as mandated by *Anders*.

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

We conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State alleged in a criminal complaint that on December 11, 2017, a man wearing a mask entered a Family Dollar store in the Village of Westfield, Marquette County, Wisconsin. The man approached the store clerk, displayed a handgun, and demanded money. The clerk gave the gunman all the money in the cash register, and the gunman then fled. The State went on to allege that on December 22, 2017, a citizen contacted police and reported that the man she had been dating, Pickle, admitted to her that he had robbed a store in Westfield while armed with a gun. He showed her a large amount of money and said that he had obtained \$1,200 in the robbery. Police arrested Pickle. During a search of his car incident to the arrest, police found several baggies of suspected marijuana, a marijuana pipe, and other drug paraphernalia. Further investigation revealed that on April 7, 2016, Pickle had been convicted in Wisconsin of multiple felonies involving controlled substances. The State charged Pickle with armed robbery as a repeat offender, possession of a firearm while a felon as a repeat offender, possession of tetrahydrocannabinols as a second or subsequent offense, and possession of drug paraphernalia.

Pursuant to a plea agreement, Pickle pled no-contest to armed robbery as a repeat offender and the State agreed to cap its recommendation for initial confinement at no more than seven years. The State also agreed that it would move to dismiss and read in the other three charges in the instant case and all of the charges in Marquette County Circuit Court case No. 2019CF7, where Pickle had been charged with two counts of receiving stolen property. The circuit court accepted Pickle's no-contest plea and granted the State's motions to dismiss and read in the remaining charges.

The matter proceeded to sentencing. Pickle faced maximum penalties of forty-six years of imprisonment and a \$100,000 fine. *See* WIS. STAT. §§ 943.32(2), 939.50(3)(c), 939.62(1)(c) (2017-18). The circuit court imposed a twenty-year term of imprisonment bifurcated as twelve years of initial confinement and eight years of extended supervision, and the circuit court ordered Pickle to serve that sentence consecutive to any previously imposed sentence. The circuit court also found Pickle eligible to participate in both the challenge incarceration program and the Wisconsin substance abuse program.

We first consider whether Pickle could pursue an arguably meritorious claim for plea withdrawal on the ground that his no-contest plea was not knowing, intelligent, and voluntary. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). At the outset of the plea hearing, the circuit court established that Pickle was thirty years old and that he had completed high school. The circuit court then conducted a colloquy with Pickle that complied with the circuit court's obligations when accepting a no-contest plea. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *see also* WIS. STAT. § 971.08. During the thorough colloquy, the circuit court established that Pickle understood the elements of the offense of armed robbery as a repeat offender, the penalties that the circuit court could impose upon conviction of that offense, and the constitutional rights that Pickle waived by entering a no-contest plea. The circuit court confirmed Pickle's understanding that the circuit court was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and the circuit court also advised Pickle of the potential immigration

consequences of his plea, as mandated by § 971.08(1)(c).<sup>2</sup> Additionally, the circuit court found that the criminal complaint set forth a sufficient factual basis to support the conclusion that Pickle committed the crime of armed robbery as a repeat offender. The record shows that Pickle entered his no-contest plea knowingly, intelligently, and voluntarily. We therefore agree with appellate counsel’s conclusion that further pursuit of this issue would lack arguable merit.<sup>3</sup>

We also agree with appellate counsel’s conclusion that Pickle could not pursue an arguably meritorious challenge to the circuit court’s exercise of sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that protection of the community and Pickle’s rehabilitation were the primary sentencing objectives, and the circuit court discussed the sentencing factors that it considered in fashioning a disposition to achieve the sentencing goals. *See id.*, ¶¶41-43. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. The

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<sup>2</sup> We have considered that, during the plea colloquy with Pickle, the circuit court warned him about the risks of deportation and other potential immigration consequences of his plea using language that deviated somewhat from the language required by WIS. STAT. § 971.08(1)(c). Minor deviations from the statutory language, however, do not undermine the validity of a plea. *See State v. Mursal*, 2013 WI App 125, ¶20, 351 Wis. 2d 180, 839 N.W.2d 173. Moreover, before a defendant may seek plea withdrawal based on the circuit court’s failure to comply with § 971.08(1)(c), the defendant must show “that the plea is likely to result in the defendant’s deportation, exclusion from admission to this country or denial of naturalization.” *See* § 971.08(2). Nothing in the record suggests that Pickle could make such a showing.

<sup>3</sup> The circuit court established during the plea colloquy that Pickle had signed a plea questionnaire and waiver of rights form after reviewing it with his attorney and that Pickle understood the contents of the form. However, the transcript of the plea hearing reflects, and the circuit court docket confirms, that the form was not filed in circuit court at the time of the plea; accordingly, the form is not part of the appellate record now. The absence of this document from the record does not provide a basis to challenge the validity of Pickle’s plea. A written plea questionnaire is a tool that the circuit court may use in conducting a plea colloquy, but it is not an essential component of the plea procedure. *See State v. Hoppe*, 2009 WI 41, ¶30, 317 Wis. 2d 161, 765 N.W.2d 794. In this case, the plea colloquy that the circuit court conducted on the record satisfied the circuit court’s obligations when accepting a plea other than not guilty.

sentence that the circuit court imposed was well within the limits of the maximum sentence allowed by law and therefore was presumptively not unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Further pursuit of this issue would lack arguable merit.

The no-merit report includes appellate counsel’s discussion of whether Pickle could raise a challenge to the effectiveness of his trial counsel, or claim that the State breached the plea agreement, or pursue sentence credit. We are satisfied that appellate counsel properly analyzed these potential issues and correctly determined that they lack arguable merit. Further discussion of these issues is not warranted.

In response to the no-merit report, Pickle asserts that he has an arguably meritorious claim that he was sentenced on the basis of inaccurate information. A defendant who alleges that a sentencing decision is based on inaccurate information must show both that the information at issue was inaccurate and that the circuit court actually relied on the inaccurate information. *See State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1.

Here, Pickle points out that during the sentencing remarks, the circuit court referred to “the burglary charge that has been dismissed and read in.” Pickle acknowledges that his trial counsel immediately objected and reminded the circuit court that Pickle had not been charged with burglary; rather, in Marquette County Circuit Court case No. 2019CF7, the State had charged Pickle with two counts of receiving stolen property. Pickle further acknowledges that the circuit court responded that it “stand[s] corrected in that regard.” Pickle nonetheless asserts that he has an arguably meritorious claim that he was sentenced on the basis of inaccurate information because the circuit court went on to say:

The receiving stolen property is a statement that you [gave] when you denied that you did the burglary. And the story ... in the [presentence investigation report] is that you bought the items in a bar from a person and you didn't know they were stolen. I don't know who believes that story. The Court doesn't believe it.

According to Pickle, the circuit court thus “re-asserted the erroneous charge claim that it clearly stated it believed to be true.”

Pickle misunderstands the circuit court's remarks. They do not reflect a misconception about the charges that were dismissed and read in. Rather, they reflect that the circuit court weighed competing inferences, assessed the credibility of Pickle's explanation of events underlying the charges in Marquette County Circuit court case No. 2019CF7, and rejected his statement to the presentence investigator minimizing his culpability.<sup>4</sup> The circuit court did not err in this regard. A circuit court at sentencing is not required to accept the defendant's self-serving statements about the charges against him or her. See *Anderson v. State*, 76 Wis. 2d 361, 369, 251 N.W.2d 768 (1977). “Credibility always is for the trier of fact to decide.” *Id.* Further pursuit of this issue would lack arguable merit.

Finally, we have considered whether Pickle could pursue an arguably meritorious challenge to the order that he pay \$35,316.68 in restitution. The record reflects that Pickle

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<sup>4</sup> We observe that the circuit court had the opportunity to consider not only Pickle's statement to the presentence investigator but also Pickle's statements at sentencing. During the course of the latter statements, Pickle apologized to the victims of the crimes charged in Marquette County Circuit Court case No 2019CF7, stating: “I hope you also accept my heartfelt apology. Nobody deserves to have their home entered. Nobody. I don't have that right. Nobody has that right. Nobody gave me that right. And I hope, in time, they can forgive me—both parties—for the wrongs I have committed to them.”

stipulated to all of the restitution requested.<sup>5</sup> See WIS. STAT. § 973.20(13)(c). Further proceedings regarding restitution therefore would lack arguable merit. See *State v. Leighton*, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126 (explaining that a defendant cannot appeal a restitution order to which he or she stipulated).

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of any further representation of Charles James Pickle. 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*

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<sup>5</sup> The record shows that Pickle stipulated to restitution in the total amount of \$36,260.68. However, \$944.00 held in evidence was applied to Pickle's restitution obligation. Accordingly, the judgment of conviction reflects an order for restitution in the amount of \$35,316.68.