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**DISTRICT III**

November 22, 2022

To:

Hon. Emily I. Lonergan  
Circuit Court Judge  
Electronic Notice

Barb Bocik  
Clerk of Circuit Court  
Outagamie County Courthouse  
Electronic Notice

Susan E. Alesia  
Electronic Notice

Winn S. Collins  
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Michael S. Preisler 337760  
Kettle Moraine Correctional Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

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

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2022AP1019-CRNM      State v. Michael S. Preisler (L. C. No. 2020CF281)

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).**

Counsel for Michael Preisler 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 Preisler's convictions for strangulation and suffocation and disorderly conduct, each as an act of domestic abuse. Preisler was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

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

(1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, on March 30, 2020, a sheriff's deputy was dispatched to a residence where Preisler and his girlfriend lived. Upon arrival, the deputy found the victim, Preisler's girlfriend, "shaking with fear" and "visibly upset." The victim reported that on March 28, 2020, she and Preisler had been arguing. At about 8:00 p.m. that day, Preisler returned to their residence, apparently intoxicated and carrying a bottle of wine. The two argued in the living room, and Preisler then blocked the victim as she attempted to walk into the kitchen. He splashed wine in her face, pushed her onto the couch, and held her down by her arms. When the victim screamed for Preisler to leave, he pinched her nose shut with his thumb and finger and put the palm of his hand over her mouth, preventing her from breathing.

Preisler then let go of the victim, but when she attempted to leave the residence, he blocked her from doing so. Preisler told the victim, "If you call 911 I'm going to stomp your fucking skull in." The victim spent the next two days trapped in the residence because she was scared of what Preisler would do if she called law enforcement or tried to leave. After two days, the victim was able to contact law enforcement when Preisler left the residence to go to a store. Based on these events, the State charged Preisler with strangulation and suffocation, felony intimidation of a victim, and disorderly conduct, each as an act of domestic abuse.

The parties ultimately reached a plea agreement. Pursuant to the agreement, Preisler entered no-contest pleas to the strangulation and suffocation charge and the disorderly conduct charge, each as an act of domestic abuse. In exchange for Preisler's pleas, the State recommended that the felony intimidation of a victim charge be dismissed and read in. The State

also agreed to cap its sentence recommendation at two years' initial confinement followed by two years' extended supervision, consecutive to any other sentence. The defense was free to argue at sentencing, and the parties agreed to jointly request a presentence investigation report.

Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Preisler's no-contest pleas, finding that they were freely, voluntarily, and intelligently entered. The parties agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for Preisler's pleas, and the court found that an adequate factual basis for the pleas existed.

At sentencing, the State recommended that the circuit court sentence Preisler to two years' initial confinement followed by two years' extended supervision, consecutive to any other sentence. The defense recommended that the court impose and stay a sentence of two years' initial confinement followed by two years' extended supervision and place Preisler on probation for three years, consecutive to an existing prison sentence. The victim addressed the court at sentencing, and Preisler exercised his right of allocution.

During its sentencing remarks, the circuit court addressed Preisler's character, his alcoholism, his history of domestic violence, the seriousness of the offenses, Preisler's past failures on supervision, and the need to protect the public. The court expressly considered probation, but it concluded that placing Preisler on probation would endanger the public and "undermine the gravity of the offense." Ultimately, the court followed the State's recommendation and sentenced Preisler to two years' initial confinement followed by two years' extended supervision on the strangulation and suffocation charge, consecutive to any other

sentence. On the disorderly conduct charge, the court imposed ninety days in jail, concurrent to Preisler’s sentence on the strangulation and suffocation charge.<sup>2</sup>

The no-merit report addresses: (1) whether there would be any arguable merit to a claim for plea withdrawal; and (2) whether there are any arguable grounds to challenge Preisler’s sentences. We agree with counsel’s description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further. The entry of a valid no-contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations that occurred before the plea was entered. *See State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved of her obligation to further represent Michael Preisler in this matter. *See* WIS. STAT. RULE 809.32(3).

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<sup>2</sup> Although not addressed in the no-merit report, we note that the circuit court briefly mentioned the COMPAS risk assessment during its sentencing remarks. The court’s comments clearly show, however, that COMPAS was not “determinative” of the sentences imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to Preisler’s sentences on this basis would therefore lack arguable merit.

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*