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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  
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**DISTRICT II**

November 23, 2022

To:

Hon. Robert Dewane  
Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Manitowoc County Courthouse  
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Stephanie M. Rock  
Electronic Notice

DeAnthony K. Muldrow, #538451  
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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2019AP2399-CRNM      State of Wisconsin v. DeAnthony K. Muldrow  
(L.C. #2009CF334)

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

DeAnthony K. Muldrow appeals a judgment of conviction based upon his guilty plea to second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2) (2009-10).<sup>1</sup> His appointed appellate counsel, Stephanie M. Rock, has filed a no-merit report concluding that any argument that could be raised on appeal would be frivolous and without any arguable merit under WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Muldrow has

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

filed a response to the no-merit report. Based upon the no-merit report and Muldrow's response, and following an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Pursuant to a plea agreement in 2010, Muldrow pled guilty to multiple counts, including the count at issue here. Pursuant to the agreement, the State urged the circuit court to adopt the parties' eighteen-year deferred judgment agreement. The prosecutor acknowledged the unusual length of the agreement, but noted Muldrow was already incarcerated and the agreement would encompass the remainder of that sentence, as well as approximately six years after his release. The circuit court accepted the deferred judgment agreement.

The deferred judgment agreement was vacated without objection in 2015 after Muldrow absconded from extended supervision. The circuit court accepted the parties' joint recommendation of a withheld sentence and a ten-year probation term. Within three days from his release from institutional care in 2018, Muldrow used a smartphone to browse dating sites and access sexually explicit content in violation of his probation conditions. His probation was revoked and the circuit court sentenced him to five years' initial confinement and four years' extended supervision. The parties stipulated to 371 days' sentence credit.

The issues that Muldrow may raise on appeal following sentencing after probation revocation are limited. His underlying conviction is not before us, *see State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994), nor is the probation revocation decision, *see State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the circuit court's sentencing discretion, and we agree with the no-merit report that

there is no arguable merit to any assertion that the court erred in that regard. The court imposed a lawful sentence after considering the appropriate factors.

Muldrow's response asserts that punishment for accessing the Internet to view adult pornography constitutes a violation of his First Amendment rights. This assertion goes to the validity of the revocation which is not before us. Muldrow concedes he was otherwise sentenced within the dictates of the law.

Muldrow contends this court should nonetheless consider his constitutional claim because he lacked any other means to raise it. He contends, without citation to authority, that he was prohibited from raising the constitutionality of his probation conditions as part of the revocation proceedings, and he requests that we advise him whether to proceed by filing a postconviction motion or writ of habeas corpus. This court's role in the no-merit context is to independently review the record to ascertain whether any issues of arguable merit exist for further proceedings. This court does not act as an advocate, and we will not abandon our neutrality to develop arguments or offer legal advice to litigants. *See State v. Gee*, 2019 WI App 31, ¶40, 388 Wis. 2d 68, 931 N.W.2d 287. There is no arguable merit to any challenge to the circuit court's exercise of sentencing discretion, which is the only issue that Muldrow can raise in these proceedings. Our independent review of the record reveals no other potentially meritorious issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See WIS. STAT. RULE 809.21(1)*.

IT IS FURTHER ORDERED that Attorney Stephanie M. Rock is relieved of further responsibility for DeAnthony K. Muldrow's representation in this appeal. *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*