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**DISTRICT III**

November 29, 2022

To:

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Circuit Court Judge  
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Clerk of Circuit Court  
Marinette County Courthouse  
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Jeremy Newman  
Electronic Notice

Justin M. Pizinski 672870  
John C. Burke Correctional Inst.  
P.O. Box 900  
Waupun, WI 53963-0900

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

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2021AP242-CRNM      State of Wisconsin v. Justin M. Pizinski (L. C. No. 2018CF58)

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).**

Justin Pizinski appeals from companion judgments convicting him of felony possession of methamphetamine<sup>1</sup> with intent to deliver and misdemeanor endangering safety by negligent use of a dangerous weapon. He also appeals from an order denying his postconviction motion

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<sup>1</sup> We note that the judgment of conviction refers to amphetamine rather than methamphetamine. Because the relevant statute lists amphetamine and methamphetamine in the same subsection of controlled substances, with the same penalties, we see no basis for appeal from this apparent clerical error. *See* WIS. STAT. § 961.41(1m)(e) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

for sentence modification. Assistant State Public Defender Jeremy Newman has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32. Pizinski was informed of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that counsel will be allowed to withdraw, and the judgments and postconviction order shall be summarily affirmed.

The State charged Pizinski with: (1) possession with intent to deliver more than fifty grams of methamphetamine, as a second or subsequent offense; (2) possession with intent to deliver 200 grams or less of THC, as a second or subsequent offense; (3) maintaining a drug trafficking place, as a second or subsequent offense; (4) second-degree reckless endangerment; (5) possession of an illegally obtained prescription drug (amitriptyline hydrochloride); (6) possession of an illegally obtained prescription drug (alprazolam); (7) possession of an illegally obtained prescription drug (Tizanidine); (8) possession of an illegally obtained prescription drug (Venlafaxine); (9) possession of drug paraphernalia (gem baggies and scales); and (10) possession of drug paraphernalia (pipes). Police discovered the drugs and paraphernalia during a search of Pizinski's house related to an incident in which he discharged a firearm into the ceiling during a family argument.

Pizinski pled guilty to a reduced count of possession with intent to deliver more than three but less than ten grams of methamphetamine without the penalty enhancer and to a reduced count of endangering safety by negligent use of a dangerous weapon. In exchange, the State agreed to recommend that the remaining counts be dismissed and read in and to recommend five years' initial confinement followed by five years' extended supervision on the possession with intent to deliver count, with a consecutive nine months in jail on the endangering safety count.

The circuit court accepted Pizinski's pleas after conducting a plea colloquy and reviewing a signed plea questionnaire and waiver of rights form, with attached elements and jury instructions for the pled-to offenses, and after ascertaining that the complaint provided a sufficient factual basis for the pleas.

The circuit court subsequently held a sentencing hearing at which the parties addressed the presentence investigation report and provided recommendations in accordance with the plea agreement. After hearing from the parties, the court discussed relevant sentencing factors—including the gravity of the offenses, the character of the offender, and sentencing goals such as punishment, rehabilitation and the protection of the public. The court then sentenced Pizinski to six years' initial confinement followed by five years' extended supervision on the possession with intent to deliver count, with a consecutive nine months in jail on the endangering safety by use of a dangerous weapon count. The court determined that Pizinski would be eligible for the substance abuse program after four years and awarded him 180 days of sentence credit on the endangering safety count.

Pizinski filed a postconviction motion seeking to modify his sentence on the possession with intent to deliver count to remove the four-year period before he would be eligible for the substance abuse program and to take into account the impact that COVID-19 had upon his health. The circuit court denied the motion following a hearing, concluding that Pizinski had failed to identify a new factor that would alter the court's view of the appropriate sentence in this case.

The no-merit report addresses the validity of the pleas and sentences and the denial of the sentence modification motion. Upon reviewing the record, we agree with counsel's description,

analysis, and conclusion that none of these issues has arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

Our independent review of the record discloses no other potential issues for appeal.<sup>2</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 judgment of conviction and postconviction order will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Assistant State Public Defender Jeremy Newman is relieved of any further representation of Justin Pizinski in this matter pursuant to WIS. STAT. RULE 809.32(3).

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<sup>2</sup> We note that Pizinski's pleas forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of 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 this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*