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DISTRICT III

December 29, 2022

To:

Hon. Emily I. Lonergan
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Ct.
Neenah, WI 54956-0310

Charles M. Stertz
Electronic Notice

Christopher S. Nitzschke
P.O. Box 7361
Appleton, WI 54913

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

2020AP1333-CRNM State of Wisconsin v. Christopher S. Nitzschke
2020AP1334-CRNM (L. C. No. 2019CM344, 2019CM463)

Before Hruz, J.¹

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 Christopher Nitzschke has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20), concluding that no grounds exist to challenge Nitzschke's convictions for misdemeanor retail theft and two counts of issuing a worthless check. Nitzschke was informed of his right to respond to the report, and he has not responded. Upon an independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

In Outagamie County case No. 2019CM344, the State charged Nitzschke with four counts of issuing a worthless check for payment of not more than \$2,500. In Outagamie County case No. 2019CM463, the State charged Nitzschke with misdemeanor retail theft by intentionally taking merchandise valued at not more than \$500. In exchange for his no-contest pleas to misdemeanor retail theft and two counts of issuing a worthless check, the State agreed to recommend outright dismissal of the remaining counts. The State also agreed it would not pursue but, rather, read in a separate referral for retail theft. With respect to sentencing, the State agreed to recommend a withheld sentence consisting of twenty-four months of probation with ninety days of conditional jail time, imposed and stayed for use by Nitzschke's probation agent. The defense remained free to argue. The circuit court withheld sentence on all counts and placed Nitzschke on probation for a total of twenty months.²

The no-merit report addresses whether Nitzschke knowingly, intelligently and voluntarily entered his no-contest pleas and whether the circuit court properly exercised its sentencing discretion. Upon reviewing the records, this court agrees with counsel's description, analysis, and conclusion that any challenge to Nitzschke's pleas or sentences would lack arguable merit. The no-merit report sets forth an adequate discussion of these potential issues to support the

² Nitzschke's probation was later revoked on all counts in both cases and, out of a maximum possible aggregate sentence of two years and three months, the circuit court imposed concurrent sentences of 200 days, with 156 days of sentence credit. Although the no-merit report addresses whether there are any grounds to challenge the sentences imposed after revocation of Nitzschke's probation, the sentences after revocation are not before this court in these appeals.

no-merit conclusion, and we need not address them further. An independent review of the records discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of his obligation to further represent Christopher Nitzschke in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals