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**DISTRICT III**

January 18, 2023

To:

Hon. James M. Peterson  
Circuit Court Judge  
Electronic Notice

Katie Schalley  
Clerk of Circuit Court  
Dunn County Judicial Center  
Electronic Notice

Winn S. Collins  
Electronic Notice

Dennis Schertz  
Electronic Notice

Jesse D. Thoms 612390  
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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2022AP1322-CRNM      State of Wisconsin v. Jesse D. Thoms (L. C. No. 2020CF187)

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 Jesse Thoms 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 Thoms' conviction for first-degree sexual assault of a child (sexual contact or sexual intercourse with a person under age thirteen), as a repeater. Thoms 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 (1967), we conclude that there is no arguable merit to any

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

issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

A criminal complaint charged Thoms with one count of first-degree sexual assault of a child (sexual intercourse with a person under age twelve), contrary to WIS. STAT. § 948.02(1)(b), and two counts of misdemeanor bail jumping, all counts as a repeater. The complaint alleged that in May 2020, Thoms was left alone with a seven-year-old girl during a gathering at her family's home. According to the complaint, Thoms laid the child on a couch, pulled her pants down, held her down with his arm, and proceeded to lick and bite her vaginal area. The child reported the assault to her mother the following morning, and the mother reported the assault to police later that day. The complaint alleged that at the time of the assault, Thoms was released on bond in two separate Dunn County cases, and his bond conditions in both cases prohibited him from committing new crimes. The complaint also alleged, for purposes of the repeater enhancers, that Thoms had been convicted of a felony offense within the five-year period immediately preceding the offenses charged in this case. *See* WIS. STAT. § 939.62(2).

The parties ultimately reached a plea agreement. Thoms agreed to plead no contest to an amended charge of first-degree sexual assault of a child (sexual contact or sexual intercourse with a person under age thirteen), contrary to WIS. STAT. § 948.02(1)(e), as a repeater. Unlike the original sexual assault charge, the amended charge did not carry a mandatory minimum term of twenty-five years' initial confinement. *See* WIS. STAT. § 939.616(1r). In exchange for Thoms' plea to the amended charge, the State agreed to recommend that the bail jumping charges be dismissed and read in. The plea agreement also provided that both sides would be free to argue at sentencing.

The circuit court conducted a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form. Following the colloquy, the court accepted Thoms' no-contest plea, finding that it was knowingly, voluntarily, and intelligently made. Based on the criminal complaint and the testimony introduced at Thoms' preliminary hearing, the court found that there was an adequate factual basis for Thoms' plea.

At Thoms' sentencing hearing, the circuit court confirmed that neither party had any corrections to the presentence investigation report. The prosecutor then read a statement from the victim's mother, after which the parties presented their sentencing arguments and Thoms exercised his right of allocation. During its sentencing remarks, the court began by explaining that probation would unduly depreciate the seriousness of Thoms' offense. After addressing the seriousness of the offense, Thoms' character, his rehabilitative needs, and the need to protect the public, the court sentenced Thoms to twenty years of initial confinement followed by ten years of extended supervision, consecutive to Thoms' sentence in Dunn County case No. 2016CF157. The parties agreed that Thoms was entitled to 197 days of sentence credit, and the court granted him credit in that amount.

The Department of Corrections (DOC) later wrote to the circuit court, asserting that Thoms was not entitled to 197 days of sentence credit because he had already received credit for that time in case No. 2016CF157. The court held a hearing, during which Thoms' attorney conceded that Thoms was not entitled to any sentence credit. The court therefore entered an amended judgment of conviction awarding Thoms zero days of sentence credit.

The no-merit report addresses: (1) whether Thoms' no-contest plea was knowing, intelligent, and voluntary; (2) whether there are any arguable grounds to challenge Thoms'

sentence; and (3) whether Thoms' trial attorney was constitutionally ineffective. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit.<sup>2</sup> 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 Dennis Schertz is relieved of any further representation of Jesse Thoms in this matter. *See* WIS. STAT. RULE 809.32(3).

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<sup>2</sup> We note that during the plea colloquy, the circuit court did not personally advise Thoms of the potential immigration consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). The record shows, however, that Thoms was born in Washington State and is therefore a United States citizen. Consequently, the court's failure to inform Thoms of the potential immigration consequences of his plea was harmless, as there were no such potential consequences. *See State v. Reyes Fuerte*, 2017 WI 104, ¶¶1-3, 378 Wis. 2d 504, 904 N.W.2d 773 (applying a harmless error analysis to a court's failure to provide the information required by § 971.08(1)(c)). Any challenge to Thoms' plea on this basis would therefore lack arguable merit.

We also note that the no-merit report does not address whether the circuit court erred by amending Thoms' judgment of conviction to grant him zero days of sentence credit. Nevertheless, the record shows that this issue lacks arguable merit. The court initially granted Thoms 197 days of sentence credit for the time period between the date he was taken into custody in this case and the date he began serving his sentence after revocation in case Dunn County case No. 2016CF157. As the DOC later pointed out, however, Thoms received credit for the same time period against his sentence in case No. 2016CF157. Because Thoms' sentence in this case is consecutive to his sentence in case No. 2016CF157, he cannot receive duplicate credit here for time already credited against his sentence in case No. 2016CF157. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) (explaining that dual credit is not permitted where two sentences are consecutive to one another).

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*