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**DISTRICT II**

February 1, 2023

To:

Hon. Daniel J. Bissett  
Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Winnebago County Courthouse  
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Daniel Goggin II  
Electronic Notice

Christian A. Gossett  
Electronic Notice

Steven L. Mitchell  
1507 W. Harris St.  
Appleton, WI 54914

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

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2020AP866-CRNM      State of Wisconsin v. Steven L. Mitchell (L.C. #2015CT563)

Before Lazar, J.<sup>1</sup>

**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).**

Steven L. Mitchell appeals from an amended judgment of conviction entered after the circuit court terminated Mitchell's participation in the Safe Streets Treatment Option Program (SSTOP), and ordered that he serve all previously imposed jail time. Appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Mitchell received a copy of the report and has not responded.

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

Upon consideration of the no-merit report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

Mitchell was charged with operating while intoxicated (OWI) as a third offense. As part of a negotiated settlement, Mitchell pled no contest to the OWI charge and the parties entered into a stipulation that jointly recommended Mitchell's placement for twelve months in SSTOP.<sup>2</sup> At sentencing, the circuit court adopted the parties' stipulation and placed Mitchell in SSTOP with various conditions, including a 120-day jail sentence, with eighty of those days stayed pending successful completion of SSTOP.

Over time, Mitchell's SSTOP supervision was extended and modified. In November 2017, the circuit court judge ordered Mitchell to be terminated from SSTOP and to serve the remainder of his jail time. Postconviction counsel was appointed and filed a postconviction motion seeking to (1) vacate the "revocation of Mr. Mitchell's SSTOP probation and execution of 80 days of stayed jail time"; and (2) reinstate Mitchell's "SSTOP probation for an additional six months." As grounds, postconviction counsel asserted that Mitchell's due process rights were violated when he was not represented by counsel at any of the SSTOP review hearings, or at the hearing in which he was terminated from SSTOP. Following a July 10, 2018

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<sup>2</sup> The authority for the SSTOP program comes from WIS. STAT. § 346.65(2)(cm), which provides that counties can offer a "reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions ... in the person's lifetime ... equals 3..." The statute further provides that "the period of imprisonment shall be not less than 45 days, except that if the person successfully completes a period of probation that includes alcohol or other drug treatment, the period of imprisonment shall not be less than 14 days." § 346.65(2)(cm).

hearing, the circuit court granted Mitchell's postconviction motion and reinstated the SSTOP supervision for another six months.

Mitchell remained unable to fully comply with the terms of SSTOP and, following a hearing on July 18, 2019, at which Mitchell was represented by counsel, the circuit court judge terminated Mitchell from SSTOP and imposed the remaining jail time. It is from this judgment that Mitchell properly appeals.

Appellate counsel's no-merit report addresses the propriety of Mitchell's no-contest plea and his original sentence, but goes on to assert that review of these issues is beyond the scope of this no-merit appeal. We agree with counsel's analysis and conclusion that, because Mitchell did not timely appeal the original 2015 judgment of conviction, he cannot now seek review of the original conviction and sentence. His notice of intent was filed in connection with the amended judgment entered July 18, 2019, after he was terminated from SSTOP and ordered to serve the remainder of his jail time.

Next, appellate counsel's no-merit report discusses the original sentence placing Mitchell in SSTOP for twelve months, and concludes that no issue of arguable merit arises from the circuit court's sentencing discretion, or from its later decision to terminate Mitchell's participation in SSTOP. We agree with counsel's analysis and conclusion that no arguable issue arises from either point, and will not further discuss either the circuit court's original sentencing decision adopting the parties' jointly recommended sentence, or its decision terminating Mitchell from SSTOP.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and

discharges appellate counsel of the obligation to further represent Mitchell in this appeal.  
Therefore,

IT IS ORDERED that the amended judgment of the circuit court is summarily affirmed.  
*See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved from further representing Steven L. Mitchell. *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*