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**DISTRICT III**

February 21, 2023

To:

Hon. John Zakowski  
Circuit Court Judge  
Electronic Notice

Katie Babe  
Electronic Notice

John VanderLeest  
Clerk of Circuit Court  
Brown County Courthouse  
Electronic Notice

Winn S. Collins  
Electronic Notice

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

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2021AP2074-CRNM      State of Wisconsin v. Mark M. Swiecichowski  
(L. C. No. 2018CF684)

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).**

Attorney Katie Babe, appointed counsel for Mark Swiecichowski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),<sup>1</sup> concluding that there is no arguable merit to challenging Swiecichowski's convictions for two counts of forgery and one count of misdemeanor theft by fraud. Swiecichowski has been informed of his right to a file a response to the report, and he has not filed a response. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we summarily affirm.

Swiecichowski was charged with two counts of forgery and one count of misdemeanor theft by fraud, all as a repeater. Pursuant to a written plea agreement, Swiecichowski pled no contest to all three charges, but without the repeater enhancers. In addition to agreeing to dismiss the repeater enhancers, the State agreed to cap its sentencing recommendation to a withheld sentence consisting of three years of probation and twelve months of jail with Huber privileges as a condition of probation. The circuit court accepted the agreement and found Swiecichowski guilty on the three charges. At sentencing, the State exceeded the sentencing recommendation to which it had agreed by arguing for concurrent sentences that would result in eighteen total months of initial confinement and twenty-four total months of extended supervision. The court imposed twenty-one months of initial confinement followed by three years of extended supervision on the forgery counts, and nine months of incarceration on the misdemeanor theft count, with the sentences running concurrently to one another.

The no-merit report first addresses whether Swiecichowski's no-contest pleas were knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The circuit court's plea colloquy, including the court's references to the plea questionnaire and waiver of rights form, sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, relating to the nature of the charges, the rights Swiecichowski was waiving, and other matters. We see no other arguable basis upon which Swiecichowski might seek plea withdrawal.

As counsel notes in the no-merit report, the State exceeded the sentencing recommendation to which it had agreed in the parties' written plea agreement. However, the State changed its recommendation only after the circuit court concluded both (1) that Swiecichowski had breached the terms of the agreement by committing a new crime, and (2) that the appropriate remedy for Swiecichowski's breach was to allow the State to change its sentencing recommendation. This procedure was consistent with *State v. Reed*, 2013 WI App 132, ¶¶1-3, 5, 9-15, 351 Wis. 2d 517, 839 N.W.2d 877. Accordingly, we agree with counsel that there is no arguable basis for Swiecichowski to pursue postconviction relief based on the State's sentencing recommendation.

The no-merit report next addresses whether the circuit court erred in exercising its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The circuit court considered the required sentencing factors along with other relevant factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors. Swiecichowski's sentences did not exceed the maximum allowed and could not be challenged as unduly harsh or so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other basis upon which Swiecichowski might challenge his sentences.

Based upon our independent review of the record, we have found no other arguable basis to pursue further appellate proceedings. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of any further representation of Mark Swiecichowski in this matter.

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

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