OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

March 23, 2023

To:

Hon. Raymond S. Huber
Circuit Court Judge
Electronic Notice

Yvette Kienert
Clerk of Circuit Court
Waupaca County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Daniel Goggin II
Electronic Notice

Danny Craig Inderdahl
Chippewa Valley Correctional Treatment Facility
2909 E. Park Ave.
Chippewa Falls, WI 54729

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

2021AP1143-CRNM State of Wisconsin v. Danny Craig Inderdahl (L.C. # 2017CF414)

Before Kloppenburg, Fitzpatrick, and Graham, 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 Daniel Goggin, as appointed counsel for Danny Craig Inderdahl, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Counsel provided Inderdahl with a copy of the report, and both counsel and this court advised him of his right to file a response. Inderdahl has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Inderdahl pled no contest to one count of operating a vehicle with prohibited blood alcohol concentration, as a fifth offense, with a minor in the vehicle. The circuit court imposed a sentence consisting of eighteen months of initial confinement and eighteen months of extended supervision.

The no-merit report addresses whether the circuit court properly denied Inderdahl's motion to strike a 1992 Waushara County conviction for operating while intoxicated (OWI). Inderdahl argued that the 1992 conviction could not be counted as a prior OWI offense because he had not validly waived his right to counsel to assist him in that case. *See* ***State v. Clark***, 2022 WI 21, ¶¶1, 2, 20, 401 Wis. 2d 344, 972 N.W.2d 533 ("a defendant may challenge a prior conviction—known as a collateral attack—when the defendant was not represented [by counsel] and did not knowingly, intelligently, and voluntarily waive the right to counsel"). In order to successfully challenge a prior OWI conviction, the defendant must point to facts showing that the circuit court, in the prior OWI proceeding, did not provide the information necessary for a valid waiver of counsel, ***State v. Ernst***, 2005 WI 107, ¶14, 283 Wis. 2d 300, 699 N.W.2d 92 (citing ***State v. Klessig***, 211 Wis. 2d 194, 206, 564 N.W.2d 716 (1997)), and that the defendant "did not know or understand the information which should have been provided" in the prior proceeding. ***Ernst***, 283 Wis. 2d 300, ¶25 (quoted source omitted). Here, the circuit court determined that Inderdahl's motion and supporting affidavit failed to make this showing and denied the motion to strike.

Any challenge to the circuit court's denial of the motion to strike would lack arguable merit. Inderdahl's affidavit in support of his motion to strike averred that: he was not represented by an attorney in the 1992 Waushara County proceedings; he did not graduate from high school; he could not remember what information about waiver of the right to counsel was or was not provided to him; he did not want a jury trial; and the State told him he would have to take the plea deal if he did not want a trial. The averments in the affidavit are insufficient to make the required showing that Inderdahl did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel. That is, the averments are insufficient to show either that he was not provided information about waiver of the right to counsel or that he did not understand the information that he should have been provided. We agree with counsel that a challenge to the circuit court's denial of Inderdahl's motion to strike would lack arguable merit.

The no-merit report also addresses whether there would be any arguable merit to challenging the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." ***State v. Byrge***, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477 (quoted source omitted). To determine legal competency, the court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. ***Id.***, ¶31. A circuit court's competency determination should be reversed only when clearly erroneous. ***Id.***, ¶45. In this case, the court ordered an examination of Inderdahl to determine if he was competent to stand trial. Inderdahl was evaluated by a psychologist and a report was filed with the court. The report indicated that Inderdahl was competent to proceed. A hearing was held at which Inderdahl was given the opportunity to challenge the report's findings. Inderdahl informed the court through his counsel

that he did not wish to contest his competency to proceed. The circuit court found that Inderdahl was competent, and the proceedings resumed. There is nothing in the no-merit report or the record that would support an arguably meritorious challenge to the circuit court's competency determination.

The no-merit report next addresses whether Inderdahl's plea was entered knowingly, voluntarily, and intelligently. Upon our independent review of the record, we are satisfied that the plea colloquy sufficiently complied with the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Inderdahl was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

Finally, the no-merit report addresses the validity of Inderdahl's sentence. As explained in the no-merit report, the sentence is within the legal maximum. As to discretionary issues, the standards for the circuit court and this court are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction and order denying the postconviction motion is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Goggin is relieved of further representation of Inderdahl in this matter. *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