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**DISTRICT II**

June 7, 2023

To:

Hon. Jennifer Dorow  
Circuit Court Judge  
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Winn S. Collins  
Electronic Notice

Monica Paz  
Clerk of Circuit Court  
Waukesha County Courthouse  
Electronic Notice

David J. Susens  
Electronic Notice

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

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2022AP265-CRNM      State of Wisconsin v. Christopher L. Vogel (L.C. #2020CF364)

Before Gundrum, P.J., Neubauer and Grogan, 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).**

Christopher L. Vogel appeals from a judgment convicting him of two counts of delivery of a non-narcotic schedule drug, both as a second and subsequent offense. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Vogel received a copy of the report, was advised of his right to file a response, and has responded. Upon consideration of the report, Vogel's response, and an independent review of the Record, we conclude there are no issues with arguable merit for appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

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

In January 2020, while a participant in the drug-treatment court, Vogel sold drugs to a confidential informant. The State charged Vogel with five counts of delivery of a non-narcotic schedule drug as a second and subsequent offense and three counts of felony bail jumping as a repeater. Pursuant to a plea agreement, Vogel pled guilty to two delivery counts, both as second and subsequent offenses, and the State agreed to dismiss and read in the remaining counts. On one of the delivery counts, the court sentenced Vogel to eighteen months' initial confinement and eighteen months' extended supervision consecutive to any other sentence. On the other delivery count, the court imposed and stayed eighteen months' initial confinement and eighteen months' extended supervision for three years' probation. This no-merit appeal follows.

The no-merit report addresses whether a basis exists to challenge either the validity of the pleas or the legality of the sentence imposed.

We first agree with counsel's analysis and conclusion that any challenge to the validity of Vogel's pleas would lack arguable merit. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the Record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Vogel's pleas pursuant to WIS. STAT. § 971.08, *Bangert*, 131 Wis. 2d at 261-62, and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

With regard to the circuit court's sentencing discretion, our review of the Record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622

N.W.2d 449. The sentence was not so excessive so as to shock the public’s sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the court’s sentencing discretion.

Vogel responded to the no-merit report. In his response, Vogel generally believes there were conflicts of interest involving both the circuit court judge and Vogel’s assistant state public defender. At sentencing, the judge disclosed that she had represented Vogel “many, many years ago” on some traffic matters. Vogel asserts the judge was required to disqualify herself under WIS. STAT. § 757.19(2)(c) and failed to do so. Section 757.19(2) provides, in relevant part:

Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs:

....

(c) When a judge previously acted as counsel to any party *in the same action or proceeding*.

*Id.* (emphasis added). Here, Vogel’s criminal matter is a different action. The judge’s past representation of Vogel does not require her disqualification under § 757.19(2)(c). In any event, Vogel discussed the issue with his attorney and consented to the waiver of any potential conflict. There would be no arguable merit to challenge the circuit court’s failure to disqualify herself from Vogel’s case.

Vogel then argues the assistant state public defender was conflicted from representing him because she was also purportedly one of the state public defender’s representatives on the drug-treatment court panel. Vogel, however, does not develop any argument as to how this is an actual conflict of interest. *See State v. Love*, 227 Wis. 2d 60, 71, 594 N.W.2d 806 (1999) (noting that where a conflict is raised for the first time in a postconviction setting, a defendant must

demonstrate by clear and convincing evidence that trial counsel “was actively representing a conflicting interest, so that the attorney’s performance was adversely affected.”). Our review of the Record does not disclose that Vogel’s trial counsel was actively representing a conflicting interest. Moreover, we observe that the same assistant state public defender represented Vogel before his December 2019 admittance to the drug-treatment court and continued to represent him when he was charged with these January 2020 crimes. There would be no arguable merit to contend Vogel’s assistant state public defender was conflicted from representing Vogel.

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 represent Vogel further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney David J. Susens is relieved of further representation of Christopher L. Vogel in this appeal. *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*