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**DISTRICT II**

June 7, 2023

To:

Hon. Daniel J. Borowski  
Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Winn S. Collins  
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Daniel Goggin II  
Electronic Notice

Joshua Alan Kaufman  
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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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2022AP405-CRNM      State of Wisconsin v. Joshua Alan Kaufman (L.C. #2020CF350)

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).**

Joshua Alan Kaufman appeals from a judgment convicting him of three counts of possession of child pornography with lifetime supervision as a serious sex offender. 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). Kaufman was advised of his right to file a response to the no-merit report, but he has not responded. Upon consideration of the report and an

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

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.

Following a tip and subsequent investigation, the State charged Kaufman with nineteen counts of possession of child pornography with lifetime supervision as a serious sex offender. Pursuant to a plea agreement, Kaufman pled no contest to three counts, and the State agreed to dismiss and read in the remaining counts. On each count the court sentenced Kaufman to five years' initial confinement and five years' extended supervision, consecutive to each other and to any other sentence. The court also ordered lifetime supervision, determining lifetime supervision was necessary to protect the public. This no-merit appeal follows.

The no-merit report addresses whether a basis exists to challenge the validity of the pleas, the circuit court's sentencing discretion, and trial counsel's performance. The report also highlights Kaufman's concern regarding sentence credit. Upon reviewing the record, we agree with counsel's analysis and conclusion that there is no arguable basis to pursue any of these issues. We comment briefly on the validity of the pleas, the court's sentencing discretion, and Kaufman's concern regarding sentence credit.

We first agree with counsel's analysis and conclusion that any challenge to the validity of Kaufman'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 Kaufman'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, focusing particularly on Kaufman's history and criminal record, noting "this is the second foray into child pornography, and there's multiple sex offender registry violations. And these are serious sex offenses." 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.

Kaufman received no sentence credit in connection with this conviction. In the no-merit report, counsel explained Kaufman was on probation at the time of these offenses, his probation was revoked, and the sentence credit for his confinement time from his arrest for these charges to his sentencing after revocation was given to the earlier case. Because the court's sentence in this case is consecutive to his previous sentence, we agree with counsel that Kaufman is not entitled to any additional credit. Any claim that Kaufman is entitled to additional sentence credit would lack arguable merit.

Finally, our independent review of the record prompts us to address one other matter that the no-merit report does not discuss. Kaufman told the presentence investigator that the cell phone app he used automatically downloaded and saved the illicit images he was sent, that he did not seek out illicit images, but that he knew they were on his cell phone. The circuit court adjourned sentencing because it wanted the parties to address whether the images were automatically saved as Kaufman claimed. Ultimately, at the adjourned sentencing hearing, the

investigating detective testified that he tested Kaufman's claim, and images exchanged on the cell phone app did not automatically download and save to the cell phone. He explained the only images that were saved were the ones received and affirmatively saved. Images that were only viewed and images that were received but unviewed did not automatically save to the cell phone. The detective also presented a conversation from Kaufman's cell phone where Kaufman and a user exchanged images, and Kaufman ultimately sent the user eighteen images of juvenile males involved in sexual situations and received thirteen images in response. After the detective testified, the court gave Kaufman and trial counsel time to confer. They conferred, and both Kaufman and his attorney advised the court that they wished to proceed with sentencing. The parties also advised the court that the detective's "discover[y] during this more detailed investigation of [Kaufman's] phone" had been summarized and provided to the defense before the adjourned sentencing hearing. Our review of the record indicates there is no arguable merit to challenge the procedure used at sentencing.

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 Kaufman 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 Daniel Goggin, II, is relieved of further representation of Joshua Alan Kaufman 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*