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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](http://www.wicourts.gov)

**DISTRICT II**

August 23, 2023

To:

Hon. Brad Schimel  
Circuit Court Judge  
Electronic Notice

Monica Paz  
Clerk of Circuit Court  
Waukesha County Courthouse  
Electronic Notice

Susan E. Alesia  
Electronic Notice

Kathilynne Grotelueschen  
Electronic Notice

Jack A. Pitzo  
Electronic Notice

Nathaniel H. Terry, #252668  
Waukesha County Jail  
515 W. Moreland Blvd.  
Waukesha, WI 53188

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

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2022AP282-CRNM	State of Wisconsin v. Nathaniel H. Terry (L.C. #2019CF1548)
2022AP283-CRNM	State of Wisconsin v. Nathaniel H. Terry (L.C. #2019CF1764)

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).**

Nathaniel H. Terry appeals from judgments, entered on guilty pleas, convicting him of operating while intoxicated as a fourth offense, felony bail jumping, and obstructing an officer. 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). Terry did not file a response. Upon consideration of the report and an independent review of the Records, we conclude that the judgments may be

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

summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

According to the complaint in Waukesha County Circuit Court case No. 2019CF1548, in November 2019, while out on bail on a felony case in Milwaukee County, Terry left two young children unattended at his apartment. Later that day, officers returned to the apartment complex and found Terry, who smelled of intoxicants, appeared to be impaired, had a white substance in one of his nostrils, and admitted he recently used cocaine. Terry also provided officers with a false name. The State charged Terry with two counts of child neglect, felony bail jumping, and obstructing an officer.

According to the complaint in Waukesha County Circuit Court case No. 2019CF1764, in December 2019, an officer clocked an oncoming vehicle traveling sixty miles per hour in a forty-miles-per-hour zone. As the vehicle approached, it crossed the center line, and the officer had to maneuver his squad car to the shoulder to avoid a collision. The officer tried to stop the vehicle, but the vehicle did not stop. When the vehicle did eventually stop, Terry was identified as the driver. Terry smelled of marijuana, advised officers that he “smoked weed a bit ago[,]”<sup>2</sup> and officers found three grams of marijuana hidden in Terry’s pants. Terry exhibited clues of impairment on the field sobriety tests, and police obtained a warrant for a blood draw. The State charged Terry with operating while intoxicated as a fourth offense, failing to install an ignition interlock device, operating while revoked, resisting an officer by failing to stop his vehicle, felony bail jumping, and possession of THC.

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<sup>2</sup> Terry recanted that statement.

In exchange for Terry's pleas to felony bail jumping and obstructing an officer in case No. 2019CF1548 and operating while intoxicated in case No. 2019CF1764, the remaining charges as well as the charges in a third case, Waukesha County Circuit Court case No. 2020CF1123,<sup>3</sup> were dismissed and read in. The State agreed to recommend twelve months' jail on the operating-while-intoxicated offense, which, given Terry's sentence credit, would amount to time served. As to the felony bail jumping and obstruction charges, the State agreed to recommend three years' probation with an imposed and stayed sentence of three years' initial confinement and three years' extended supervision. Terry recommended a total of two years' probation on the bail jumping and obstruction charges. The circuit court sentenced Terry to twelve months' jail on the operating-while-intoxicated offense (time served) and withheld sentence and ordered two years' probation on the bail jumping and obstruction charges. This no-merit appeal follows.

The no-merit report addresses potential issues of: whether the circuit court erred by denying Terry's suppression motion in the operating-while-intoxicated case; whether Terry's pleas were knowingly, voluntarily, and intelligently entered; and whether the circuit court properly exercised its discretion at sentencing. Upon reviewing the Records, 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 and the court's sentencing discretion.

We first agree with counsel's analysis and conclusion that any challenge to the validity of Terry's pleas would lack arguable merit. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389

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<sup>3</sup> In Waukesha County Circuit Court case No. 2020CF1123, the State charged Terry with possession of THC, resisting or obstructing an officer, and two counts of felony bail jumping.

N.W.2d 12 (1986). Our review of the Records and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Terry'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 Records 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.

Our independent review of the Records discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgments of conviction, and discharges appellate counsel of the obligation to represent Terry further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. See Wis. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved of further representation of Nathaniel H. Terry in these appeals. See Wis. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*