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**DISTRICT III**

November 7, 2023

To:

Hon. Edward F. Vlack III  
Circuit Court Judge  
Electronic Notice

Kristi Severson  
Clerk of Circuit Court  
St. Croix County Courthouse  
Electronic Notice

Megan Elizabeth Lyneis  
Electronic Notice

Brian T. Smestad  
Electronic Notice

Michael Timothy Rubbelke  
6126 France Avenue S.  
Edina, MN 55410

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

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2022AP1122-CRNM      State of Wisconsin v. Michael Timothy Rubbelke  
(L. C. No. 2019CM408)

Before Stark, P.J.<sup>1</sup>

**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).**

Michael Timothy Rubbelke appeals from a judgment convicting him, after a jury trial, of one count of unlawful use of a telephone in violation of WIS. STAT. § 947.012(1)(b). Rubbelke's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Rubbelke received a copy of the report, was advised of his right to file a response, and he has not done so. Upon consideration of the report and an independent review of the record, this court concludes that the judgment may be summarily

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Rubbelke was charged with three counts of unlawful use of a telephone. The criminal complaint alleged that on March 25, 2019, Rubbelke made at least fifteen calls to the St. Croix County Government Center and directed obscene and profane language at persons in the offices of the clerk of court and child support. The matter was tried to a jury, which found Rubbelke guilty on Count Three and not guilty on the other two counts. The circuit court imposed and stayed a jail sentence of forty-five days, placed Rubbelke on probation for one year, and ordered thirty days of conditional jail time. Rubbelke appealed, and counsel filed a no-merit report.

The no-merit report addresses whether there was sufficient credible evidence to support the guilty verdict. On review of a jury's verdict, this court views the evidence in the light most favorable to the State and the verdict. *See State v. Poellinger*, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). “[T]he jury verdict will be overturned only if, viewing the evidence most favorably to the [S]tate and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.” *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation omitted). The no-merit report sets forth the applicable standard of review and the evidence satisfying the elements of the crime. This court is satisfied that the no-merit report properly analyzes this issue as lacking arguable merit.

Next, the no-merit report discusses whether the circuit court erroneously exercised its discretion in admitting or excluding evidence. The record reflects that the court made only one evidentiary ruling, which was to grant Rubbelke's pretrial motion in limine. The State did not

oppose the motion. There would be no arguable merit to challenging the court's exercise of discretion with respect to evidentiary rulings.

The final issue counsel addresses in the no-merit report is whether the circuit court erroneously exercised its sentencing discretion. As explained in the no-merit report, the sentence imposed was within the legally permissible penalty range. The standards for the circuit court and this court on discretionary sentencing issues 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 court considered appropriate factors, did not consider improper factors, and reached a reasonable result. Any argument that the court erroneously exercised its sentencing discretion is without arguable merit on appeal. Additionally, this court agrees with appellate counsel that nothing in the record would support an arguably meritorious motion for sentence modification.

This court's review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Rubbelke further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Megan Elizabeth Lyneis is relieved from further representing Michael Timothy Rubbelke in this matter. *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*