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 II**

February 28, 2024

*To*:

Hon. Michael S. Kenitz
Circuit Court Judge
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Douglas C. McIntosh
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Miles T. Colwell #592264
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

---

2023AP1340-CRNM State of Wisconsin v. Miles T. Colwell (L.C. #2021CF61)

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

Miles T. Colwell appeals from a judgment of conviction, entered following his guilty pleas, for tampering with a global position system tracking device and knowingly failing to notify a school of his sex offender status. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Colwell received a copy of the report, was advised of his right to file a response, and has responded. Upon consideration of the report, Colwell's response, and an independent review of the record,

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

we conclude that the judgment may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

A criminal complaint alleged that Colwell was a convicted sex offender who was required to comply with the sex offender registry and be monitored by a global positioning system ("GPS"). The complaint alleged that Colwell had attended his girlfriend's son's weekend basketball games without notifying the schools beforehand. *See* WIS. STAT. § 301.475(1) (A person who is required to comply with the sex offender reporting requirements may not be on any school premises "unless the school district administrator … has been notified of the specific date, time, and place of the visit and of the person's status as a registered sex offender.") Additionally, data from Colwell's GPS device did not indicate he was at the schools for the weekend basketball games. Instead, the GPS information showed the device would return to Colwell's residence on Friday evenings and remain at his residence, connected to the charger, without any motion, until Sunday evenings when Colwell would leave for work. When police arrested Colwell following a different incident, Colwell was not wearing his GPS device.

The State charged Colwell with two counts of knowingly failing to notify a school of his sex offender status and two counts of tampering with a GPS tracking device. Pursuant to a plea agreement, on August 18, 2022, Colwell pled guilty to one count of knowingly failing to notify a school of his sex offender status and one count of tampering with a GPS tracking device. On the knowingly-failing-to-notify-a-school count, the circuit court sentenced Colwell to nine months' jail concurrent to any sentence he was serving. On the GPS-tampering count, the court sentenced Colwell to one year of initial confinement and one year of extended supervision, consecutive to any other sentence.

The no-merit report first addresses potential issues of whether Colwell's pleas were knowingly, voluntarily, and intelligently entered. We agree with counsel's analysis and conclusion that any challenge to the validity of Colwell'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 Colwell's pleas. *See* WIS. STAT. § 971.08; ***Bangert***, 131 Wis. 2d at 261-62; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

The no-merit report then addresses 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 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.

In Colwell's response to the no-merit report, he argues there is potential merit to challenge his conviction for tampering with a GPS device based on ***State v. Rector***, 2023 WI 41, 407 Wis. 2d 321, 990 N.W.2d 213. In ***Rector***, the supreme court clarified that multiple convictions for possession of child pornography within a single case do not constitute convictions on "separate occasions" under the plain meaning of WIS. STAT. § 301.45(5)(b)1, which requires lifetime sex offender registration if a person is convicted of a sex offense "on 2 or more separate occasions." ***Id.***, ¶19. Prior to ***Rector***, the statute had been interpreted in an attorney general opinion. The opinion determined that "separate occasions" included multiple convictions imposed at the same time in the same case. *See* Wis. Op. Att'y Gen. to Jon E.

Litscher, Sec'y of the Wis. DOC, OAG-02-17 (Sept. 1, 2017), *available at* https://docs.legis.wisconsin.gov/misc/oag/recent/oag_2_17.pdf. The opinion relied on ***State v. Wittrock***, 119 Wis. 2d 664, 350 N.W.2d 647 (1984) and ***State v. Hopkins***, 168 Wis. 2d 802, 484 N.W.2d 549 (1992), in which our supreme court interpreted the term "separate occasions" in the repeater statute to include convictions imposed at the same time, *see* ***Wittrock***, 119 Wis. 2d at 665-66, 673-74, and offenses committed within the same course of conduct, *see* ***Hopkins***, 168 Wis. 2d at 805.

Appointed counsel explains that Colwell was required to register as a sex offender after being convicted in Washington County Case No. 2012CF33 of four counts of possession of child pornography, contrary to WIS. STAT. § 948.12, which is a "sex offense" under WIS. STAT. § 301.45(1d)(b). He was released from confinement to extended supervision and he was subsequently informed "by his probation agent of a Special Bulletin Notice, which also was distributed to law enforcement, requiring . . . [him] to comply with lifetime Global Positioning System Tracking under WIS. STAT. § 301.48(2)(a)7."[2]

Colwell argues that pursuant to ***Rector***, which was issued after he pled guilty and was sentenced in this case, he was not convicted of possession of child pornography on two or more separate occasions and should therefore not have been subject to GPS monitoring. Colwell

[2] WISCONSIN STAT. § 301.48(2)(a)7. generally requires the department of corrections to maintain lifetime tracking of a person if "A police chief or a sheriff receives a notification under s. 301.46(2m)(am) regarding the person."

theorizes that because he should not have been subject to GPS monitoring, he should not have been charged with tampering with a GPS device. *See* WIS. STAT. § 946.465(2).[3]

Counsel responds that post-***Rector***, it may be that Colwell is no longer subject to the lifetime GPS tracking requirement. However, counsel explains that, even so, there is no legal basis to challenge Colwell's tampering conviction in this case or seek plea withdrawal under ***Rector*** because, at the time of the violations, the GPS requirement underpinning Colwell's charge of tampering was validly premised on a then-acceptable interpretation of the "separate occasion" language.

We agree. As explained in ***McMann v. Richardson***, 397 U.S. 759, 774 (1970),

> [W]hen the defendant waives his state court remedies and admits his guilt, he does so under the law then existing; further, he assumes the risk or ordinary error in either his or his attorney's assessment of the law and facts. Although he might have pleaded differently had later decided cases then been the law, he is bound by his plea and his conviction unless he can allege and prove serious derelictions on the part of counsel sufficient to show that his plea was not, after all, a knowing and intelligent act.

Here, as previously stated, we agree with counsel's assessment that Colwell's pleas in this case were knowing, voluntary, and intelligent. Accordingly, there is no arguable merit to challenge Colwell's tampering conviction based on ***Rector***.

[3] WISCONSIN STAT. § 946.465(2) provides: "Whoever, without the authorization of the department of corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 or 301.49 is guilty of a Class I felony."

Our independent review of the record discloses no other potential issues for appeal. This court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Colwell 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 Douglas C. McIntosh is relieved of further representation of Miles T. Colwell in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

---

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