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June 5, 2013

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Michael D. Condon Jr.  
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You are hereby notified that the Court has entered the following opinion and order:

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2012AP2793-CRNM      State of Wisconsin v. Michael D. Condon, Jr. (L.C. # 2011CM163)

Before Brown, C.J.<sup>1</sup>

Michael D. Condon, Jr., appeals from a judgment of conviction for resisting an officer, contrary to WIS. STAT. §§946.41(1) and 939.51(3)(a), and from a subsequent restitution order.<sup>2</sup>

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Upon Condon's guilty plea, the trial court withheld sentence and ordered a two-year term of probation. Subsequently, the trial court ordered restitution in the amount of \$<sup>5073</sup>.10. Condon'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). Condon received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* RULE 809.21.

The criminal complaint in this case charged Condon with one count of resisting an officer and alleged that on June 12, 2011, Condon pulled away and began to run from an officer who was in the process of arresting Condon for operating while intoxicated (OWI). The officer again grabbed Condon, who flailed his arms and continued to resist. Condon refused the officer's commands to lie on his stomach and continued to resist until another officer arrived and helped take Condon into custody.

Condon pled pursuant to a plea agreement which also encompassed the OWI case.<sup>3</sup> Pursuant to the parties' joint agreement, the court withheld sentence in favor of a two-year probation term. Restitution was to be determined within thirty days. When the restitution claim

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<sup>2</sup> Condon's notice of intent to pursue postconviction relief was filed on April 24, 2012, and was therefore timely only as to the April 20, 2012 restitution order. Because Condon's no-merit report address issues pertaining to his judgment of conviction entered December 21, 2011, we will extend the time for filing a notice of intent from his judgment to April 24, 2012. We will construe the notice of intent filed on April 24, 2012, as Condon's intent to appeal both the judgment of conviction and restitution order.

<sup>3</sup> This appeal is only from the judgment of conviction and restitution order entered in connection with Pierce County Case No. 2011CM163, the resisting case.

was filed, Condon objected and after a restitution hearing, the trial court entered an order for restitution in the amount of \$5073.10.

The no-merit report first addresses whether there are any arguable grounds supporting Condon's plea withdrawal. Based on our independent review, we agree with appellate counsel's analysis and her ultimate conclusion that Condon's guilty plea was knowingly, voluntarily, and intelligently entered. Condon executed a signed plea questionnaire and waiver of rights form in which he acknowledged the parties' plea agreement, elements of the offense, possible penalties, and the constitutional rights waived by a guilty plea. The trial court drew his attention to and ascertained his understanding of the document. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights form is competent evidence of a knowing, intelligent, and voluntary plea). The trial court also engaged in an appropriate colloquy and made the necessary advisements and findings required by Wis. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. No meritorious issue arises from the plea taking.

We also conclude that there is no arguable merit to a claim that the trial court improperly exercised its sentencing discretion. In fashioning the sentence, the court considered the seriousness of the offense, the defendant's character and history, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Further, the trial court accepted the parties' joint agreement and Condon is estopped from challenging that sentence on appeal. See *State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998). Finally, it cannot reasonably be argued that Condon's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We further conclude based on our independent review that there is no arguable merit to a claim challenging the trial court's restitution order. At the restitution hearing, evidence was presented that due to injuries sustained as a result of Condon's crime, the officer's insurance carrier paid \$3295.04 for medical costs and \$1778.15 for lost wages on the officer's behalf. The State presented evidence that the officer missed twelve days of work based on the advice of medical professionals and that the insurer paid the worker's compensation claim. Condon testified that his actions could not possibly have resulted in such a large amount of medical expenses and lost wages. The trial court credited the State's witnesses and found that the officer's medical bills and lost wages were actually and reasonably incurred as a result of Condon's resistive actions.

WISCONSIN STAT. § 973.20(1r) requires a court to order full or partial restitution unless it "finds substantial reason not to do so and states the reason on the record." Where an officer is the direct victim of a crime considered at sentencing, he or she is entitled to restitution for injuries substantially caused by the defendant's actions. *Cf. State v. Lee*, 2008 WI App 185, ¶¶11, 14, 314 Wis. 2d 764, 762 N.W.2d 431 (officer not entitled to restitution for injuries suffered during chase of suspect where he was not a direct victim of the armed robbery crime considered at sentencing). The trial court may order reimbursement to an insurer "[i]f justice so requires." *See* § 973.20(5)(d). We review a trial court's restitution order for an erroneous exercise of discretion. *State v. Haase*, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526.

In this case, unlike *Lee*, the officer was a direct victim of the crime considered at sentencing, resisting an officer. The trial court's finding that the officer actually sustained the claimed injuries in the amount paid by the insurer was not clearly erroneous. The trial court understood that it was ordering reimbursement to an insurer and properly determined that justice

required restitution: “And so I find that restitution has been—that the damages were incurred, and that the insurance company paid, and they deserve—that Worker’s Comp claim deserves to be reimbursed by the person who caused it.”

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and order for restitution, and discharges appellate counsel of the obligation to represent Condon further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order for restitution are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Katie R. York is relieved from further representing Michael D. Condon, Jr., in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*