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**DISTRICT I/IV**

January 23, 2009

To:

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Milwaukee County Courthouse  
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Terry Lee Pugh  
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You are hereby notified that the Court has entered the following opinion and order:

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2008AP2173-CRNM      State of Wisconsin v. Terry Lee Pugh (L.C. #2008CF202)

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

Counsel for Terry Lee Pugh has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2005-06).<sup>1</sup> Pugh has not responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there are no issues of arguable merit that Pugh could raise in postconviction proceedings. We therefore summarily affirm Pugh's conviction.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Pugh entered a guilty plea to possessing a firearm in a school zone. The circuit court withheld sentence and placed Pugh on probation for eighteen months. The court imposed and temporarily stayed a ninety-day jail sentence as a condition of probation. Subsequently, the circuit court record of events shows that the court indefinitely suspended that condition. The court also ordered that it would consider discharging Pugh from his sentence upon successful completion of twelve months on probation.

Counsel's no-merit report addresses whether the complaint stated probable cause to charge Pugh, whether he could meritoriously challenge his plea or his sentence, whether the court properly exercised its sentencing discretion, and whether Pugh received effective assistance from trial counsel. We agree that raising any of these issues in postconviction proceedings or on appeal would be frivolous.

According to the complaint, a safety aide at Pugh's high school observed Pugh inside the school with a handgun. The aide took the gun away from him, and Pugh later confessed to police that he possessed the weapon while at school. It would be frivolous to argue that this information in the complaint failed to show probable cause that Pugh committed the charged crime.

In accepting Pugh's plea, the circuit court complied with the requirements set forth in *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), as explained in *State v. Moederndorfer*, 141 Wis. 2d 823, 826-28, 416 N.W.2d 627 (Ct. App. 1987), to ensure a knowing, intelligent, and voluntary plea. Pugh signed and acknowledged his understanding on a standard plea questionnaire containing the information necessary for a knowing and voluntary plea. The court advised Pugh of the maximum potential sentence for his crime, and that the

court could sentence him up to the maximum. The court also explained the elements of the crime. Pugh acknowledged that he understood the rights he was waiving, and denied that the plea was the result of coercion or promises beyond those contained in the plea bargain. Pugh stated that the facts in the complaint were correct, and stipulated that they provided an adequate factual basis for his plea. Because the plea colloquy combined with the plea questionnaire complied with *Bangert*, and because the record reveals no other basis, there is no meritorious argument supporting plea withdrawal.

Pugh asked for a probationary term of twelve months, with a conditional jail term of thirty days. He received a term of eighteen months, with a stayed jail term and the opportunity for discharge after twelve months. He could not meritoriously contend that the sentence he received was excessive, or that the court erroneously exercised its discretion in any other manner. The circuit court considered both mitigating and aggravating factors and, as it must, fully explained the reasons for the sentence on the record. See *State v. Gallion*, 2004 WI 42, ¶¶1, 8, 270 Wis. 2d 535, 678 N.W.2d 197.

Postconviction counsel raises the issue of trial counsel's effectiveness, but is unable to identify any arguably meritorious claim that counsel performed ineffectively. It appears that Pugh's primary concern in this regard was counsel's failure to successfully bargain for a misdemeanor charge. However, the prosecutor indicated on the record that he had seriously considered reducing the charge but had decided against doing so after consulting with other attorneys in his office. He also explained the reasons for that decision. The record provides no basis to meritoriously argue that counsel's efforts to reduce the charge fell below the standard of competent representation, or that counsel could have succeeded in reducing the charge under any

circumstances. Our independent review of the record discloses no instances in which counsel arguably performed below the standard of reasonable representation.

Our independent review of the record also discloses no other potentially meritorious issues that Pugh could raise in postconviction proceedings. We therefore affirm the circuit court's judgment and relieve Pugh's counsel of any further representation of him in this matter.

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 J. Dennis Thornton is relieved of any further representation of Terry Lee Pugh in this matter. *See* WIS. STAT. RULE 809.32(3).

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*David R. Schanker*  
*Clerk of Court of Appeals*