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DISTRICT IV

October 23, 2025

To:

Hon. Paul S. Curran
Circuit Court Judge
Electronic Notice

Alecia Kast
Clerk of Circuit Court
Juneau County Justice Center
Electronic Notice

John Blimling
Electronic Notice

Kathleen A. Lindgren
Electronic Notice

Joshua W. Birdsill 524321
Stanley Correctional Institution
100 Corrections Dr.
Stanley, WI 54768

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

2024AP1362-CRNM State of Wisconsin v. Joshua W. Birdsill (L.C. # 2022CF251)

Before Graham, P.J., Blanchard, and Taylor, 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).

Attorney Kathleen Lindgren, as appointed counsel for Joshua Birdsill, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Birdsill with a copy of the report, and both counsel and this court advised him of his right to file a response. Birdsill has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our

¹ All references to the Wisconsin Statutes are to the (2023-24) version.

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Birdsill pled guilty to two counts of burglary, as a repeater. On the first count, the circuit court imposed a sentence of three years of initial confinement and three years of extended supervision, consecutive to existing sentences. On the second count, the court withheld sentence and placed Birdsill on probation for ten years.

Birdsill filed a postconviction motion asking the circuit court to find him eligible for the substance abuse program. At sentencing, the court had stated: “There is no indication in the file that there is any substance abuse issue here, so he’s not eligible for the Substance Abuse Program or the Challenge Program.” The postconviction motion asked the court to exercise its “discretionary authority” to change this finding. The motion argued that a presentence investigation report that was prepared about Birdsill for similar offenses in another county contained information about his substance use, but this report or the information was not made available to the sentencing court in this case.

The circuit court held a hearing at which it heard arguments on the motion. The court noted that the motion did not cite authority for the proposition that it had authority to change this finding, and did not rely on any other legal theory. The court also said that it would not have found Birdsill eligible for the program because it was skeptical about the accuracy of the substance-related information.

The no-merit report briefly notes the existence of this postconviction motion and decision, but does not discuss whether the issue has arguable merit for appeal. We conclude that it does not. As the circuit court pointed out, the legal basis for the motion was unclear. And, to

the extent that any potential legal theory might have included consideration by the court of whether the new information would have changed its decision to find Birdsill ineligible for the program, there does not appear to be a basis to argue that the court erred in deciding that its decision would not have been different. There is no arguable merit to this issue.

We next consider whether there are other issues that counsel could have raised in the postconviction motion, but did not, and whether there are any other arguable issues that were already preserved for appeal. *See* WIS. STAT. § 974.02(2).

The no-merit report addresses whether Birdsill's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Birdsill was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses Birdsill's sentences. As explained in the no-merit report, the sentence and probation term are within the legal maximum. As to discretionary issues, the standards for the circuit court and this court 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 circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Lindgren is relieved of further representation of Birdsill in this matter. *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