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DISTRICT II

April 29, 2026

To:

Hon. Timothy D. Boyle
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

John Blimling
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Jayjuan S. Smith, #728823
Fox Lake Correctional Institution
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Fox Lake, WI 53933

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

2025AP2379-CRNM State of Wisconsin v. Jayjuan S. Smith (L.C. #2021CF1105)

Before Neubauer, P.J., Grogan, 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).

Jayjuan S. Smith appeals from a judgment of conviction entered upon his plea of no contest. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Smith 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

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

the report and an independent review of the record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Smith with one count of homicide by use of a vehicle with a detectable amount of a controlled substance in his blood in violation of WIS. STAT. § 940.09(1)(am), a Class D felony. *See* WIS. STAT. § 939.50(3)(d). The charge was issued after a vehicle Smith was driving crashed into a motorcycle. The driver of the motorcycle, Steven Holub, died at the scene. A blood test determined that the defendant had 6.9 ng/mL of Delta-9-THC in his blood at the time of the crash.

Pursuant to an agreement with the State, Smith entered a plea of no contest to the sole count of homicide by use of a vehicle with a detectable amount of a restricted controlled substance in his blood. Under WIS. STAT. § 940.09(1c)(a), upon conviction of that offense, the circuit court is required to impose a bifurcated sentence with a presumptive minimum of at least five years of initial confinement. A presentence investigation (PSI) was ordered. At sentencing, consistent with the terms of the plea agreement, the State requested seven years of initial confinement and five years of extended supervision, and the defense requested five years of initial confinement and seven years of extended supervision. The court sentenced Smith to ten years of initial confinement and five years of extended supervision. This no-merit appeal follows.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant either must show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective

assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 272-76, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

As stated above, Smith entered a no-contest plea to the charged offense. The circuit court conducted a standard plea colloquy, inquiring into Smith's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived.² See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Smith understood that it would not be bound by any sentencing recommendations. In addition, Smith provided the court with a signed plea questionnaire. Smith indicated to the court that he had indeed signed the form and understood the information explained on that form, and he is not now claiming otherwise. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The circuit court found that facts in the criminal complaint supplied a factual basis for the plea, and there is nothing in the record or the no-merit report that leads us to conclude otherwise. In addition, nothing in our independent review of the record would support a claim that counsel rendered ineffective assistance of trial counsel. Smith has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all

² The circuit court did not provide the required immigration warning. However, as the no-merit report accurately observes, harmless error applies to this oversight. *State v. Reyes Fuerte*, 2017 WI 104, ¶32, 378 Wis. 2d 504, 904 N.W.2d 773. The error here was harmless because no-merit counsel "cannot represent that Mr. Smith faced any immigration consequences as a result of his plea." The PSI indicates he was born in Illinois. Further, the immigration consequences of the plea are set forth on the plea questionnaire, which Smith admitted he signed and understood.

nonjurisdictional defects and defenses, aside from any suppression ruling.³ *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offenses, Smith's character, and the need to protect the public. See *State v. Gallion*, 2004 WI 42, ¶¶27, 40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Smith had the opportunity to address the court directly, and did so prior to the court's imposition of sentence. The court imposed a sentence of ten years of initial confinement and five years of extended supervision. Smith faced a minimum sentence of five years imprisonment and a maximum of twenty-five years. Under the circumstances, it cannot reasonably be argued that Smith'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).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. See *State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

³ Our review of the record and the no-merit report does not indicate that any suppression motions were filed in this case.

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved from further representing Jayjuan S. Smith 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