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DISTRICT II

September 23, 2026

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Circuit Court Judge
Electronic Notice

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

2024AP1706-CRNM State of Wisconsin v. Anderail K. Armstrong, Sr.
(L.C. #2020CF1274)

Before Gundrum, Grogan, and LoCoco, 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).

Anderail K. Armstrong, Sr. appeals from a judgment convicting him, following a jury trial, of first-degree reckless homicide, delivery of heroin, possession with intent to deliver narcotics, and maintaining a drug trafficking place.¹ His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)² and *Anders v. California*, 386 U.S. 738 (1967). Armstrong was sent a copy of the report and has filed a response. Upon reviewing the entire

¹ Armstrong was convicted as a repeater and/or second-and-subsequent offender on all counts.

² All references to the Wisconsin Statutes are to the 2023-24 version.

Record, as well as the no-merit report and response, we conclude that there are no arguably meritorious appellate issues. Accordingly, we summarily affirm.

On July 27, 2020, JS³ died from acute fentanyl toxicity after using heroin sold by Armstrong. Trial testimony established that Armstrong sold heroin to Sam Parrone, who supplied it to Casie Fletcher-Hicks. Fletcher-Hicks and JS used the heroin sold by Armstrong. JS overdosed, and Fletcher-Hicks called 911. JS was transported to a local hospital where he succumbed to the complications from the fentanyl and died nine days later, after being taken off life support.

Prior to JS's death, on July 22, 2020, police conducted a controlled buy in which Fletcher-Hicks bought heroin from Parrone. Upon his arrest, Parrone said that Armstrong was his only source of heroin at the time. After seeking and receiving a search warrant, police found 7.5 grams of fentanyl, a digital scale, 13.3 grams of marijuana, and cash, including \$80 of buy money for which police had pre-recorded serial numbers, at Armstrong's residence. Armstrong, Parrone, and Fletcher-Hicks were all charged for their roles in JS's death.

The no-merit report addresses the sufficiency of the evidence on which the jury convicted Armstrong and the circuit court's sentencing decision. The report provides a detailed recitation of the facts and procedural history of the case, and counsel concludes that there would be no merit to any appellate argument based on those issues. This court is satisfied that the no-merit report correctly analyzes these issues as without merit.

³ This court uses initials for confidentiality. See WIS. STAT. RULE 809.81(8).

We now address the issues Armstrong raises in his response to the no-merit report. Armstrong first argues that his trial counsel rendered ineffective assistance for a variety of reasons, all of which relate to challenges to the State's evidence proving that acute fentanyl toxicity was a substantial factor causing JS's death. Specifically, Armstrong asserts that counsel performed deficiently in failing to hire an expert to challenge JS's cause of death; failing to present a third-party liability defense; and, finally, in failing to request that the jury be instructed on the lesser-included offense of reckless injury as an alternative to reckless homicide.

We first conclude that trial counsel's decision not to hire a defense expert was objectively reasonable under the facts and circumstances of this case. Counsel was not necessarily required to consult with an independent expert. See **State v. Wood**, 2010 WI 17, ¶¶71-74, 323 Wis. 2d 321, 780 N.W.2d 63 (whether to consult an expert and whether or not to call an expert witness are discretionary decisions made by trial counsel). In considering whether trial counsel performed deficiently, we will not by hindsight reconstruct the "ideal defense." **State v. Harper**, 57 Wis. 2d 543, 556-57, 205 N.W.2d 1 (1973) (the test for effectiveness is much broader and a defendant is not entitled to the perfect or best defense, but only to one which under all the facts constitutes reasonably effective representation).

Here, trial counsel's decision not to hire an expert to challenge the autopsy results or to call an expert at trial was perfectly reasonable. Trial counsel effectively challenged the medical examiner's conclusions at trial. Through her cross-examination, counsel was able to show the jury that the State's expert could not say which of the drugs JS took before overdosing contained fentanyl. The expert further admitted that while there was fentanyl in JS's blood, heroin was not detectable. Counsel hammered in her closing argument the facts that JS took cocaine and other substances before overdosing; there was testimony at trial that street drugs besides heroin may

also contain fentanyl; no one knows which substance JS ingested immediately before overdosing; and the amount of heroin that JS ingested that was attributable to Armstrong could not have contained a sufficient amount of fentanyl to kill him.

Counsel also reminded the jury of the trial testimony that the level of fentanyl in JS's blood was not much greater than an amount one would find in a prescribed, therapeutic dose. She challenged the toxicology report, calling it incomplete. She asked the jury to consider that it was not fentanyl that led to JS's death but, rather, it was the delay in getting emergency treatment that led to the oxygen deficiency that caused his death. In sum, counsel was able to effectively advance all the arguments Armstrong asserts an expert would have made through careful cross-examination and closing argument highlighting what counsel argued were deficiencies.

As we noted above, contrary to Armstrong's presentation of the facts in his response, trial counsel did effectively make a third-party liability argument to the jury. She stressed in her closing argument the medical examiner's testimony that, but-for Fletcher-Hicks delaying her call to 911 so she could clean up the scene, the complications JS suffered from the overdose that ultimately led to his death may have been lessened. Had Fletcher-Hicks called 911 immediately, it would have shortened the duration that JS's brain was deprived of oxygen and he may have survived. Counsel stressed that the delay in getting JS emergency services that Fletcher-Hicks created was essential for the jury to consider because "one of the big [e]lements for First[-]Degree Reckless Homicide is that the substance caused the death." In short, trial counsel did not perform deficiently in her treatment of issues related to the cause and timing of JS's death.

We further observe that all of Armstrong's ineffective-assistance arguments are rooted in his belief that the jury wrongly convicted him. The issues he raises are based on the false premise that Wisconsin law requires that Armstrong had to have handed the fentanyl-laced heroin directly to JS and JS had to have died immediately upon ingesting the heroin to support a conviction of first-degree reckless homicide. This is simply not the case. WISCONSIN STAT. § 940.02(2)(a) provides that first-degree reckless homicide, is committed by one who causes the death of another human being by delivery of a controlled substance in violation of WIS. STAT. § 961.41. Consistent with the pattern jury instruction, the jury was instructed as follows:

Whether the substance is a controlled substance by itself, or a mixture or combination of a controlled substance with any compound, mixture, diluent or other substance is not relevant as long as JS died as a result of using the substance.

It is not required that the defendant delivered the substance directly to JS. If possession of the substance was transferred more than once before it was used by JS, each person who transferred possession of that substance has delivered it.

See WIS JI—CRIMINAL 1021 (2022).

As noted, Parrone and Fletcher-Hicks were also charged along with Armstrong for their roles in JS's death. The law provides for this result, which is intended to hold all parties in the drug-supply chain accountable for their actions when an illegal substance causes death. The fact that JS's family chose to take him off life support because the complications from the fentanyl rendered him brain-dead in no way diminishes the jury's finding that the heroin Armstrong supplied was a substantial factor in causing JS's death. No expert or other defense would have changed the verdict here, and there was no basis to give the lesser-included instruction because JS did, in fact, die, making reckless homicide the only appropriate charge.

We conclude trial counsel did not perform deficiently; our review of the Record confirms that there would be no basis on which to challenge trial counsel's performance. *See generally State v. Sholar*, 2018 WI 53, ¶32, 381 Wis. 2d 560, 912 N.W.2d 89 (discussing the standard for claims of ineffective assistance of counsel).

Armstrong next argues that the circuit court improperly exercised its sentencing discretion. According to Armstrong, the court's sentence for reckless homicide was based on inaccurate information because "the State failed to prove its burden that the death was caused by fentanyl [delivered] by" Armstrong. However, the fact that the jury convicted Armstrong means that the State did meet its burden of proving that the heroin Armstrong sold was a substantial factor in JS's death. Again, Armstrong appears to merely disagree with the jury's ultimate decision, but this disagreement does not mean the court erroneously exercised its discretion.

Both the no-merit report and our review of the Record confirm that in imposing sentence, the circuit court considered the seriousness of the offense, Armstrong'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. The court also imposed a sentence well below the maximum exposure Armstrong faced, which cannot be said to shock the public's sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguable merit to a claim that the court erroneously exercised its sentencing discretion by basing the sentence on inaccurate information.

In summary, a jury trial has many components which must be examined for the existence of potential appellate issues, including those discussed above, and pretrial rulings, voir dire, jury selection, evidentiary objections during trial, proper jury instructions, propriety of opening statements and closing arguments, a valid colloquy regarding the defendant's rights to testify or

not testify, and results of polling the jury. The report does not indicate any issues of arguable merit in any of these areas, and our independent review of the Record for potential issues in these areas similarly provides 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.

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 Thomas J. Erickson is relieved from further representing Anderail K. Armstrong, Sr. 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