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DISTRICT III

May 20, 2025

To:

Hon. Maureen D. Boyle
Circuit Court Judge
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

Frederick A. Bechtold
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You are hereby notified that the Court has entered the following opinion and order:

2023AP881-CRNM State of Wisconsin v. Samuel J. Dobbins (L. C. No. 2020CF118)

Before Stark, P.J., Hruz, and Gill, 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).

Samuel Dobbins appeals from his convictions, following a jury trial, on one count of a second or subsequent offense of possessing methamphetamine with intent to deliver, one count of obstructing an officer, and two counts of possessing drug paraphernalia. Attorney Frederick A. Bechtold has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24).[1]

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

The no-merit report sets forth the procedural history of the case and addresses the following issues: whether Dobbins' trial counsel should have filed a suppression motion; whether voir dire revealed any grounds to strike the jurors who were ultimately empaneled; evidentiary rulings at trial; Dobbins' decision not to testify; the jury instructions; the sufficiency of the evidence to support the verdicts; and the sentences. Dobbins has filed a response to the no-merit report presenting the following arguments: the circuit court improperly denied Dobbins' motion to discharge counsel; there was a break in the "chain of custody" of evidence presented at trial; Dobbins' speedy trial rights were violated; trial counsel should have filed a suppression motion; Dobbins was denied sentence credit; two jurors were napping during the trial; some transcripts are missing; and there was no factual basis for the "second or subsequent" enhancer. Bechtold has filed a supplemental no-merit report addressing the issues raised by Dobbins.

Having independently reviewed the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal. Therefore, we summarily affirm the judgment of conviction.

The criminal complaint, filed April 16, 2020, alleged that Dobbins resisted when a law enforcement officer arrested him on an outstanding probation warrant and that several hours after Dobbins had been transported to the police station, another officer discovered a sock containing several baggies of methamphetamine and a glass pipe in the back of the transporting squad car. Dobbins was released on a signature bond on August 20, 2020.

Dobbins sent the circuit court a pro se letter requesting a speedy trial on July 22, 2020. The trial was not held until February 18, 2022, just over 22 months after Dobbins was charged. The trial delay was the result of Dobbins' quarantine for COVID after his release from prison, a

judicial substitution request filed by Dobbins, Dobbins' participation in an in-patient substance abuse treatment program as an alternative to the revocation of his probation in another case, the State Public Defender's need to appoint outside counsel due to a conflict of interest, Dobbins changing his mind about entering a guilty plea, Dobbins' trial counsel's failure to calendar and resulting conflict with a scheduled trial date, the unavailability of two analysts from the State Crime Laboratory, and the parties' joint request for more time to reach a resolution.

Prior to trial, Dobbins moved to discharge his appointed counsel, Attorney Cheryl Gill, based upon an alleged lack of communication and dissatisfaction with her representation. The circuit court found that Gill was prepared for trial, and it ruled that Dobbins could substitute counsel if he could retain another attorney but that Gill would not be allowed to withdraw before Dobbins had obtained substitute counsel. No other attorney ever filed a notice of appearance or notice of substitution on Dobbins' behalf.

At trial, the arresting law enforcement officer, Kevin Reinikainen, testified that he made contact with Dobbins at a gas station at about 10:00 a.m. on June 1, 2019, in order to execute an arrest warrant. Dobbins refused commands to stop and then struggled when the officer used physical force to arrest him. Reinikainen searched Dobbins' person before placing him in the back of a squad car but he did not find any contraband. Reinikainen and another officer next searched Dobbins' vehicle and discovered a butane torch and some unused gem baggies consistent with packaging and selling methamphetamine. Reinikainen then transported Dobbins to the Barron County Jail in his squad car.

A second law enforcement officer, Jason Zimmerman, testified that he came on to the night shift at 6:00 p.m. on June 1, 2019, when Reinikainen finished the day shift. Zimmerman

then took over use of the squad car that Reinikainen had used to transport Dobbins to the jail. Zimmerman performed a visual search of the backseat of the squad car at the beginning of his shift, but he did not see anything. About 15 minutes into his shift, Zimmerman transported another individual, Brandon Benson, to the jail.

A correctional officer who worked at the jail, Tanner Steinmetz, testified that he was on duty when Zimmerman transported Benson to the jail. After Benson was removed from the squad car, Steinmetz looked into the back of the squad car with a flashlight and discovered a Superman sock under the front passenger seat. Steinmetz turned the sock over to Zimmerman and he watched Zimmerman remove three baggies containing a powdered substance and a glass pipe with a powdered residue on it.

Zimmerman contacted Reinikainen to tell him about finding a sock containing suspected drugs and drug paraphernalia in their shared squad car. The following day, Reinikainen conducted a search of Dobbins' apartment and discovered a single Superman sock matching the one recovered from the squad car.

The defense stipulated that the substance in the three baggies and on the glass pipe tested positive for methamphetamine, with a combined weight of 2.893 grams. A State Crime Laboratory analyst testified that Dobbins was included as a possible contributor to a mixed DNA sample obtained from the glass pipe and that the probability of randomly selecting an unrelated contributor was 1 in 369,000.

Dobbins elected not to testify, and the circuit court conducted a colloquy to ascertain that the decision was knowingly, voluntarily, and intelligently made. The defense relied on the testimony that Reinikainen had searched Dobbins upon his arrest before placing him in the squad

car and that Zimmerman had searched the squad car at the beginning of his shift—both without finding anything—to argue that the sock must have been left in the squad car by Benson.

Following a conference, the parties agreed that the methamphetamine count would be amended to a lower amount than charged to conform to the evidence and that the circuit court could instruct the jury with a series of pattern instructions, including one for a lesser-included offense of simple possession of methamphetamine. However, the verdict form erroneously cited the subsection of the methamphetamine statute relating to the original charge of three to ten grams, rather than the amended charge of less than three grams. *Compare* WIS. STAT. § 961.41(1m)(e)1., *with* § 961.41(1m)(e)2. The jury returned guilty verdicts on all four counts, without any special finding as to the amount of methamphetamine recovered.

The circuit court ordered a presentence investigation report (PSI) and subsequently held a sentencing hearing. At the beginning of the hearing, the parties acknowledged the incorrect statute citation on the verdict form but they agreed that it was harmless error because the jury had not been asked to determine the amount of drugs and Dobbins had been convicted of the lowest amount. The State and Dobbins jointly recommended an imposed and stayed sentence for the methamphetamine count of three years' initial confinement followed by three years' extended supervision. This sentence was subject to a three-year term of probation consecutive to a sentence of nine years' initial confinement followed by three years' extended supervision that Dobbins was serving on another case and including concurrent jail sentences on the other counts to be served during Dobbins' other sentence.

After hearing from the parties, the circuit court discussed factors such as the seriousness of the offenses and Dobbins' character—including his lengthy criminal history—and explained

how those factors related to the court's primary sentencing goal of protecting the public. The court then imposed and stayed a sentence on the methamphetamine count of three years' initial confinement followed by three years' extended supervision, subject to a slightly longer five-year term of probation consecutive to a sentence that Dobbins was serving on another case. The court imposed 9 months in jail on the obstruction count and 30 days in jail on each of the paraphernalia counts, all to be served concurrently with the sentence Dobbins was already serving in another case. The court did not award any sentence credit.

Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that Dobbins has no arguably meritorious basis to challenge voir dire, any evidentiary rulings at trial, Dobbins' decision not to testify, the jury instructions or verdict forms, the sufficiency of the evidence to support the verdicts, or the sentences. We will therefore not discuss those issues further. We will briefly address why the additional issues Dobbins raises in his response to the no-merit report also lack arguable merit.

First, a defendant has no right to choose what attorney is appointed as counsel or what issues that attorney will raise. ***State ex rel. Ford v. Holm***, 2004 WI App 22, ¶4, 269 Wis. 2d 810, 676 N.W.2d 500. A defendant who disagrees with appointed counsel's professional choices as to how to proceed has the option of proceeding pro se or retaining private counsel. ***Id.*** Because Dobbins neither asked nor agreed to proceed pro se, and he failed to ever retain private counsel, the circuit court did not err by refusing to allow appointed counsel to withdraw.

Second, Dobbins misunderstands the term "chain of custody," which refers to how evidence is handled *after* it comes into the State's possession. *See generally* ***State v. McCoy***, 2007 WI App 15, ¶9, 298 Wis. 2d 523, 728 N.W.2d 54. Whether to draw the inference that the

methamphetamine and glass pipe found in the sock were within Dobbins' possession before they were discovered in the squad car is a matter of the sufficiency of the evidence, which was fully litigated to the jury.

Third, Dobbins cannot demonstrate any claim for relief arising from either a statutory or constitutional speedy trial violation. Dobbins could obtain no relief on a statutory speedy trial claim because he was released on a signature bond. *See* WIS. STAT. § 971.10(4) (the exclusive remedy for noncompliance with the statutory speedy trial requirement is discharge from custody). Next, Dobbins never preserved the issue of a constitutional speedy trial violation by moving to dismiss the case on speedy trial grounds and cannot establish that his trial counsel provided ineffective assistance by failing to move for dismissal. Courts employ a four-part balancing test to determine whether a person's constitutional right to a speedy trial was violated: (1) the length of delay, (2) the reason for the delay, (3) whether the defendant asserted his or her right to a speedy trial, and (4) whether the delay resulted in prejudice to the defendant. ***State v. Borhegyi***, 222 Wis. 2d 506, 509, 588 N.W.2d 89 (Ct. App. 1998). Here, the bulk of the delay was attributable to Dobbins' own requests or needs, not those of the State, and Dobbins was not prejudiced by the delay.

Fourth, trial counsel had no factual basis to file a suppression motion. Because Dobbins was on probation when his vehicle and apartment were searched, the searching officer required only reasonable suspicion that Dobbins had committed a crime or a violation of a condition of release before conducting the warrantless searches. *See* WIS. STAT. § 973.09(1d). Reinikainen had reasonable suspicion that Dobbins might be engaging in drug activity based upon Dobbins' prior drug convictions, his resistance to the arrest—including attempting to hide behind his vehicle—and the items found in Dobbins' vehicle. In addition, the warrant for Dobbins' arrest

on a probation hold provided reasonable suspicion that Dobbins had violated a condition of his release, and the items found in the squad car provided additional suspicion that Dobbins was engaged in drug activity.

Fifth, Dobbins was not entitled to credit for time he spent on probation holds related to this case because he was awarded credit for the same time on sentences he was serving in Barron County Circuit Court Case Nos. 2015CF471 and 2016CF271. *See* ***State v. Morrick***, 147 Wis. 2d 185, 191, 432 N.W.2d 654 (Ct. App. 1988).

Sixth, Dobbins did not preserve a claim of juror inattentiveness by raising a contemporaneous objection to the alleged napping jurors. Moreover, the witnesses interviewed by appellate counsel's investigator could not specify what portions of the trial the jurors may have missed when they were observed several times with their eyes closed. Without specificity as to what testimony was missed, a defendant cannot demonstrate prejudice. *See* ***State v. Hampton***, 201 Wis. 2d 662, 669-70, 549 N.W.2d 756 (Ct. App. 1996).

Seventh, the missing transcripts Dobbins complains about are actually in a separate case, Barron County Case No. 2021CF26.

Finally, the "second and subsequent offense" enhancer was based upon Dobbins' prior conviction for possession of methamphetamine in Barron County Case No. 2016CF271, as listed in the PSI. In any event, the circuit court did not use any of the additional available time based upon the enhancer when it sentenced Dobbins to only three years' initial confinement.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of

Anders. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Frederick A. Bechtold is relieved of any further representation of Samuel Dobbins in this matter pursuant to 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