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DISTRICT II

July 16, 2025

To:

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Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

John Blimling
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Tracy C. Beard 509633
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1014-CRNM	State of Wisconsin v. Tracy C. Beard (L.C. #2018CF1600)
2024AP1018-CRNM	State of Wisconsin v. Tracy C. Beard (L.C. #2022CF1741))

Before Neubauer, 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).

Tracy C. Beard appeals judgments of conviction, entered on his guilty pleas, for fleeing an officer, felony bail jumping, and two counts of retail theft-intentionally take an amount that does not exceed \$500. 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). Beard was advised of his right to file a response and has not responded. After reviewing the Record and counsel's

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

report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

In Waukesha County Circuit Court Case No. 2018CF1660, video surveillance showed Beard enter a Target store on October 17, 2018, and again on October 19, 2018. Each time, he took 12 cans of baby formula and left the store without paying for the merchandise. On October 27, 2018, police were dispatched to a retail theft in progress; Target's loss prevention officer reported Beard was leaving the store without paying for a cart full of baby formula. When officers attempted to stop the vehicle Beard was driving, he took off at a high rate of speed, began weaving in and out of traffic, and exceeded speeds of over 100 miles per hour. Eventually, the pursuit was terminated and Beard was arrested. The State charged Beard with fleeing an officer and three counts of retail theft-intentionally take an amount that does not exceed \$500.

On February 6, 2020, pursuant to a plea agreement, Beard pled guilty to fleeing and two counts of retail theft. The remaining charge as well as the charges in Waukesha County Circuit Court Case Nos. 2018CM2329, 2018CM2667, 2019CF479, and 2019CF21² were dismissed and read in. The State agreed to recommend unspecified incarceration on the fleeing count. As for the retail theft counts, the State agreed to recommend unspecified jail to be imposed but stayed for 18 months' probation. The circuit court found Beard guilty and set a date for sentencing.

² The charges in these dismissed and read-in files included various counts of retail theft, bail jumping, and forgery-uttering.

Sentencing was delayed for various reasons, including Beard's nonappearances. During this time, Beard remained under conditions of bond. Ultimately, in Waukesha County Circuit Court Case No. 2022CF1741, the State charged Beard with felony bail jumping for failing to appear at one of the court hearings. Pursuant to a plea agreement, Beard pled guilty to the felony bail-jumping charge. Another felony bail-jumping charge in Waukesha County Circuit Court Case No. 2023CF123 was dismissed and read in. The State agreed to recommend unspecified prison. At a combined sentencing hearing, the circuit court sentenced Beard to a cumulative sentence of two years' initial confinement and two years' extended supervision.³ This no-merit appeal follows.

The no-merit report addresses potential issues of whether Beard's pleas were knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised its discretion at sentencing. Upon reviewing the Record, we agree with counsel's analysis and conclusion that there is no arguable basis to pursue any of these issues. We briefly comment on them.

With regard to the circuit court's first plea colloquy, where Beard pled guilty to fleeing and two counts of retail theft, our review of the Record and of counsel's analysis in the no-merit report satisfies us that the court complied with its obligations for taking Beard's pleas. *See* WIS.

³ In Waukesha County Circuit Court Case No. 2018CF1600, Beard was sentenced to one year of initial confinement and one year of extended supervision on the fleeing count, and six months' jail on each of the retail theft counts, with all counts concurrent to each other. In Waukesha County Circuit Court Case No. 2022CF1741, Beard was sentenced to one year of initial confinement and one year of extended supervision on the felony bail-jumping count, consecutive to his sentence in Case No. 2018CF1600.

STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

As to the circuit court’s second plea colloquy, where Beard pled guilty to felony bail jumping, appellate counsel points out that the court did not specifically advise Beard, as required by *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14, that it was not bound by any sentencing recommendations and could impose up to the maximum sentence. However, counsel advises this court that there is no merit to seek plea withdrawal on this basis because the circuit court confirmed that Beard understood the maximum sentence, and the parties’ plea agreement did not commit the State to any specific sentencing recommendation other than “unspecified prison.” Further, Beard also received the benefit of his plea agreement, which called for the dismissal of another felony bail-jumping charge from a different case. Given the above, we agree with counsel that there is no arguable merit to seek plea withdrawal on this basis. Beard was not affected by the defect in the plea colloquy and could not show that plea withdrawal would be “necessary to correct a manifest injustice,” which “occurs when there has been ‘a serious flaw in the fundamental integrity of the plea.’” See *State v. Cross*, 2010 WI 70, ¶42, 326 Wis. 2d 492, 786 N.W.2d 64 (citation omitted).

Counsel also points out that at the second plea colloquy, the circuit court did not advise Beard, as required by WIS. STAT. § 971.08(1)(c), that, as a result of his plea, he could be deported, excluded from admission, or denied naturalization if he was not a citizen of the United States. Counsel explains the error is harmless because Beard was advised of the deportation consequences during the first plea colloquy, in Waukesha County Circuit Court Case No. 2018CF1600, the plea questionnaire and waiver of rights form included a deportation warning, and there is no evidence that Beard is not a United States citizen. See *State v.*

Reyes-Fuerte, 2017 WI 104, ¶32, 378 Wis. 2d 504, 904 N.W.2d 773 (failing to provide deportation warning subject to harmless error analysis). We agree with counsel that there is no arguable merit to seek plea withdrawal on this basis.

The remainder of the circuit court's second plea colloquy sufficiently complied with the requirements of *Brown*, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Beard was waiving, and other matters. The Record shows no other ground to withdraw the plea. We therefore agree with counsel's analysis and conclusion that any challenge to the validity of Beard's pleas would lack arguable merit.

With regard to the circuit court's sentencing discretion, our review of the Record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors. See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. See *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was not so excessive so as to shock the public's sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We conclude there would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the Record discloses no other potential issues for appeal. This court accepts the no-merit report, affirms the judgments of conviction, and discharges appellate counsel of the obligation to represent Beard further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved of further representation of Tracy C. Beard in these appeals. *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