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DISTRICT I

September 9, 2025

To:

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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:

2023AP1818-CRNM State of Wisconsin v. Michael John Biskupski
(L.C. # 2018CF4671)

Before White, C.J., Donald, and Geenen, 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).

Michael John Biskupski appeals from a judgment, entered on his guilty plea, convicting him of operating a motor vehicle while intoxicated (OWI) as a tenth offense. He also appeals from a "judgment of bail/bond forfeiture" and from an order denying his motion to reconsider the forfeiture judgment. Appellate counsel, Angela Dawn Chodak, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).[1] Biskupski has submitted a response. Upon this court's independent review of the record, as

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

mandated by ***Anders*** and as supplemented pursuant to this court's order, counsel's report, and Biskupski's response, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgments and order.

On September 28, 2018, around 2:35 a.m., Detective Michael Sitter observed a vehicle with excessive window tint accelerating to over 45 miles per hour in a 25-mile-per-hour zone. The detective initiated a traffic stop and observed the driver, later identified as Biskupski, to have a strong odor of alcohol, bloodshot and glassy eyes, and slurred speech. West Allis Police Officer Matthew Jacobsen joined the detective at the scene and observed similar signs of impairment. Biskupski admitted consuming one or two beers and agreed to perform field sobriety tests. He exhibited six of six impairment clues during the horizontal gaze nystagmus test, but could not perform any additional tests due to back problems. Based upon these observations, Officer Jacobsen believed Biskupski to be intoxicated.[2] Biskupski had nine prior countable convictions, and was therefore charged with operating a motor vehicle while intoxicated (OWI) as a tenth offense.

At Biskupski's initial appearance on October 1, 2018, his bail was set at $10,000 cash. Biskupski paid the bail on February 22, 2019, and was released from custody under supervision of JusticePoint Services. The terms of release required Biskupski to "appear on all court dates," "not commit any crime," and maintain absolute sobriety. Biskupski missed a scheduled contact with JusticePoint and a drug test. He presented himself for a make-up appointment on March 27,

[2] Biskupski's blood was drawn shortly after the stop; the reported blood-alcohol concentration was .177. Because of his prior convictions, Biskupski's limit was .02, *see* WIS. STAT. § 340.01(46m)(c), but he was not charged in this case for a prohibited alcohol concentration.

2019, and tested positive for cocaine. A hearing to address the violations was held the next day. The court did not require forfeiture of the previously posted $10,000, but it did raise the bail by $5,000, to a total of $15,000. Biskupski was returned to custody.

The matter was scheduled for a plea and sentencing hearing on April 8, 2019, then rescheduled several times, ultimately to July 16, 2019. Meanwhile, on July 3, 2019, Biskupski paid the additional $5,000 cash bail and was released from custody again. However, he failed to appear at the July 16, 2019 hearing. The circuit court issued a bench warrant for Biskupski and orally directed forfeiture of the bail.[3] Written notice of the forfeiture was, according to docket entries, mailed to Biskupski on July 31, 2019. He did not respond to the notice, and the docket contains an entry reflecting that the bail was forfeited on September 4, 2019.

Biskupski was arrested on the warrant on September 19, 2020, more than a year after it was issued. At the warrant return hearing, the circuit court commented that Biskupski had "remained out on the warrant so long that the bail was in fact fully forfeited" and set a new cash bail amount of $40,000.

Biskupski eventually pled guilty to OWI-10th on March 15, 2021, and the matter proceeded straight to sentencing. The circuit court[4] imposed a ten-year sentence consisting of five years of initial confinement and five years of extended supervision.[5] During sentencing,

[3] The Honorable Michelle A. Havas issued the warrant and directed forfeiture of the bail.

[4] The Honorable Mark A. Sanders presided over sentencing and the relevant postconviction matters.

[5] There was a mandatory minimum sentence of four years' initial confinement. *See* WIS. STAT. § 346.65(2)(am)7.

defense counsel asked the circuit court to consider reinstating and refunding some or all of the $15,000 bail. Counsel explained that Biskupski "posted $15,000, and then panicked, got scared, and that's his life savings." Biskupski had previously informed the court that he is "unable to work going forward" due to back problems and that "he will be destitute if that money is not returned," so counsel argued that "if we want to increase the chances that Mr. Biskupski will succeed, having him be released from prison … penniless is a good way to increase the chances that he's going to mess up on extended supervision." During allocution, Biskupski personally asked the court to "please return my bail money so I can support myself through this prison sentence and not be a burdened [sic] on anyone else."

The circuit court denied the request to return the bail money, for two reasons. First, it explained, the bail had been "forfeited officially" after Biskupski's failure to appear, and the court "[did not] think that the county [sic] has that money anymore." Second, because Biskupski had been "out on a bench warrant … for more than a year," the circuit court said it could not "in good [conscience] … return that money," even if it were possible to do so.

Biskupski appealed. During briefing, Biskupski asked this court to dismiss the pending appeal and remand the case to the circuit court with an extension of time for filing a postconviction motion. Appellate counsel explained that, in preparing the reply brief, she had realized that "the circuit court relied on substantially and materially incorrect information" in denying the return of the bail and that the proper course of action would be to "present the correct information to the circuit court in a motion to reconsider." We granted the request.

Biskupski filed his reconsideration motion on February 16, 2023. He argued that the statutory procedure for forfeiting bail, WIS. STAT. § 969.13, was incomplete, so the bail had not

been "forfeited officially" and the circuit court incorrectly believed that it was powerless to return any portion of the bail. Biskupski also argued that the court had failed to examine factors relevant to a decision on whether to refund bail money, constituting an erroneous exercise of discretion. The court ordered briefing on the reconsideration motion and conducted a hearing, after which it denied reconsideration and entered judgment against Biskupski for the bail amount. Biskupski appeals.

Appellate counsel addresses two issues in the no-merit report: whether the circuit court properly exercised its sentencing discretion and whether the court properly exercised its discretion when it refused to return Biskupski's forfeited bail money. However, we first discuss whether there is any arguable merit to challenging the validity of Biskupski's plea, which must be knowing, intelligent, and voluntary to pass constitutional muster. *See* ***State v. Brown***, 2006 WI 100, ¶25, 293 Wis. 2d 594, 716 N.W.2d 906.

We begin by observing that appellate counsel did not address the validity of Biskupski's plea because, citing ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), counsel asserts that any issue with the plea "was mooted by the filing of another postconviction motion in this case." Presumably, counsel is referring to the postconviction reconsideration motion, which only sought reconsideration of the bail refund denial. However, counsel's assessment of the viability of an appellate challenge is incorrect, because any issue with the plea is forfeited, not moot.

"An issue is moot when its resolution will have no practical effect on the underlying controversy." ***Marathon Cnty. v. D.K.***, 2020 WI 8, ¶19, 390 Wis. 2d 50, 937 N.W.2d 901 (citations omitted). Failure to preserve an issue for appeal through a postconviction motion

results in forfeiture of the issue, not mootness. *See* ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996); ***State v. Ndina***, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. While an appellant is usually not permitted to raise forfeited issues in their direct appeal, the no-merit process affords appellate counsel the opportunity to explain why certain issues would lack arguable merit because they have been forfeited. *See* ***State ex rel. Panama v. Hepp***, 2008 WI App 146, ¶27, 314 Wis. 2d 112, 758 N.W.2d 806.

We have therefore considered whether there are any arguably meritorious claims relating to Biskupski's plea, including potential claims of ineffective postconviction counsel for failure to preserve any issues with the plea. However, we are satisfied that Biskupski's plea was constitutionally sound. Our review of the record—including the plea questionnaire, waiver of rights form, and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and ***Brown***, 293 Wis. 2d 594, ¶35. Accordingly, there is no arguable merit to a claim that the court failed to fulfill its obligations for accepting a plea or that Biskupski's plea was anything other than knowing, intelligent, and voluntary. Because there is no arguably meritorious challenge to the plea, there is also no arguably meritorious claim of ineffective assistance of postconviction counsel for failing to preserve any such challenge. *See* ***State v. Wheat***, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441.

As noted, one of the issues appellate counsel does address in the no-merit report is whether the circuit court properly exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49,

¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider other factors. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the court's discretion. ***Id.***

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The 10-year sentence imposed is well within the 15-year range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, appropriately incorporates the mandatory minimum term of initial confinement, and is 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). There is no arguable merit to a challenge to the court's sentencing discretion.

Finally, we consider whether there is any arguable merit to a claim that the circuit court erred in refusing to return any or all of Biskupski's bail payments. If the conditions of bond are not complied with, the circuit court "shall enter an order declaring the bail to be forfeited." WIS. STAT. § 969.13(1). When bail is ordered forfeited, a notice "shall be mailed forthwith by the clerk to the defendant and the defendant's sureties[.]" Sec. 969.13(4). The defendant then has 30 days to "appear and surrender to the court" and convince the court that the defendant's appearance at the scheduled time "was impossible and without the defendant's fault[.]" ***Id.*** If the defendant is unsuccessful, "the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding." ***Id.***

A bail forfeiture order "may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture." WIS. STAT. § 969.13(2). Determining what justice does or does not require under § 969.13(2) involves consideration of a number of factors.[6] *See* ***State v. Ascencio***, 92 Wis. 2d 822, 831-32, 285 N.W.2d 910 (1979); ***Melone v. State***, 2001 WI App 13, ¶6, 240 Wis. 2d 451, 623 N.W.2d 179 (2000). Remission of the forfeiture is permitted at any time prior to entry of the judgment of forfeiture. *See* ***Ascencio***, 92 Wis. 2d at 829. The decision whether to set aside or modify a bail forfeiture order is discretionary. ***Id.*** Discretion is properly exercised when the circuit court examines relevant facts, applies proper legal standards and engages in a rational decision-making process. ***Melone***, 240 Wis. 2d 451, ¶4.

In denying the return of bail money at sentencing, the circuit court reasoned that the bail had been "forfeited officially" to the county and was no longer in the court clerk's possession, so

[6] The factors listed in ***State v. Ascencio***, 92 Wis. 2d 822, 831-32, 285 N.W.2d 910 (1979), are:

> [G]overnment expense in retrieving the principal and again preparing for trial, prejudice and delay suffered by the government, the stage of the proceedings, whether a professional bondsman or merely a friend of the defendant is involved, willfulness of the default, expenses of the surety, whether the surety surrendered the principal, whether the surety knew of a planned default, whether the defendant or the surety were aware of conditions that were subsequently violated, whether the defendant was required by law to make a court appearance in another state, whether the defendant was imprisoned at the scheduled time of appearance, whether the government was informed that the principal would not be able to appear, whether the forfeiture appeared to be an attempt to punish the defendant, the face amount of the bond and justifications for setting the original amount, the degree of blatancy or extenuating circumstances in defendant's default, and the inability of sureties to prevent the defendant from conspiring with others to avoid trial.

returning the funds was not possible.[7] The court also stated it could not in good conscience return the money, which seems to have been based solely on the fact that Biskupski's warrant stood open for over a year. Biskupski's reconsideration motion explained that although there was a docket entry for the "official" forfeiture, there had not been any judgment entered as required by WIS. STAT. § 969.13(4). Therefore, Biskupski reasoned, the money had not been officially forfeited and the court could still return the bail money if it thought it proper. However, Biskupski complained, the court had not considered any of the ***Ascencio*** factors.

In his no-merit response, Biskupski argues that a tenth OWI "is not reason to keep my bail." He also contends that the circuit court's decision improperly "alludes to punishment."[8]

We can assume without deciding that the circuit court's original decision on returning bail constituted an erroneous exercise of discretion because that specific error was subsequently remedied through the reconsideration motion and subsequent ruling. *See, e.g.*, ***Highland Manor Assocs. v. Bast***, 2003 WI 152, ¶17, 268 Wis. 2d 1, 672 N.W.2d 709 ("[P]ublic policy favors allowing a circuit court to reconsider its decisions. … [A] motion for reconsideration enables a circuit court to hone its analysis and thus expedite the appellate review process"); ***Harris v. Reivitz***, 142 Wis. 2d 82, 89, 417 N.W.2d 50 (Ct. App 1987) ("The supreme court encourages litigants to request the trial courts for reconsideration as a method of correcting errors."); *see also*

[7] On reconsideration, the circuit court requested a response from Milwaukee County, which answered: "Assuming the evidence shows that the funds were transferred from the Clerk of Courts to the Treasurer, and the [c]ourt enters an order that such funds must be returned, the Treasurer will comply with the [c]ourt's order in a timely manner."

[8] Biskupski further complains that he "was never notified of any hearings" because he was homeless. However, when Biskupski posted the additional $5,000 bail, he signed a form on which his July 16, 2019 hearing was listed as the next hearing date.

State v. Fuerst, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (explaining that a postconviction motion challenging a sentence affords the circuit court an opportunity to "clarify its statements" regarding its rationale).

Like the decision whether to return some portion of the bail money, we review a circuit court's decision on a motion for reconsideration for a proper exercise of discretion. *See* ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853; ***Franke v. Franke***, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832. However, the question is not whether this court would have reached the same conclusion, only whether the circuit court properly exercised its discretion. *See* ***Odom***, 294 Wis. 2d 844, ¶8.

On reconsideration, the circuit court undertook the analysis it failed to do at sentencing. After receiving briefs, it conducted a hearing on whether some portion of Biskupski's bail should be returned. In its oral ruling, the circuit court discussed all of the factors specifically listed in ***Ascencio*** and explained whether each one weighed in favor of returning the bail. We are satisfied that the discussion of factors at the reconsideration hearing reflects a proper exercise of discretion.[9] In particular, the circuit court noted that Biskupski "got scared and didn't come to court" and explained that such nonappearance is "exactly the incentive that cash bail is designed to overcome: fear of a particular result." After the circuit court reviewed the relevant factors and

[9] We briefly note that in considering "whether the surety surrendered the principal," the circuit court commented, "Well, the surety did; it was cash bail that was forfeited." ***Ascencio*** makes clear that this factor considers whether the person who put up the money surrendered the principal *actor*—that is, the defendant—to authorities. ***State v. Ascencio***, 92 Wis. 2d 822, 832, 285 N.W.2d 910 (1979). Upon consideration of the entire record, however, this minor misconstruction does not give rise to any claim of arguable merit.

concluded the return of bail was not warranted, it denied reconsideration and entered judgment against Biskupski, as contemplated under WIS. STAT. § 969.13(4).

As noted, Biskupski complains in his response that the circuit court alludes to punishment. "[F]orfeitures are not properly ordered to enrich the government or punish a defendant." ***Ascencio***, 92 Wis. 2d at 831. There is no suggestion that the court was using bail forfeiture to punish Biskupski. The court explained:

> The next factor is whether the forfeiture appears to be an attempt to punish the defendant. Well, you know this depends on where you're sitting. From Mr. Biskupski's seat, the loss of $15,000 is nothing other than a punishment…. [I]n a broader perspective, it is really the motive behind cash bail. It's the incentive to get people to come back to court….
>
> [I]t's also worth noting that on a previous violation of bail, no bail was forfeited. If there had been a desire to merely punish Mr. Biskupski or a consistent desire I should say to punish Mr. Biskupski, it's likely that bail would've been forfeited the first time there was a violation, and then, again, the second time that there was a violation. Rather the [c]ourt was more restrained and elected not to forfeit any bail for the first violation.

On this record, then, there is no arguable merit to a claim that the circuit court improperly exercised its discretion in declining to refund any portion of Biskupski's bail, and no arguable merit to a claim that the court improperly denied the motion for reconsideration.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Angela Dawn Chodak is relieved of further representation of Biskupski 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