



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

September 11, 2025

To:

Hon. Todd P. Wolf
Circuit Court Judge
Electronic Notice

Kimberly Stimac
Clerk of Circuit Court
Wood County Courthouse
Electronic Notice

Erica L. Bauer
Electronic Notice

John Blimling
Electronic Notice

Neko D. Forbes 706450
Jackson Correctional Institution
P.O. Box 233
Black River Falls, WI 54615-0233

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

2023AP1459-CRNM	State of Wisconsin v. Neko D. Forbes (L.C. # 2020CF301)
2023AP1460-CRNM	State of Wisconsin v. Neko D. Forbes (L.C. # 2020CF479)

Before Blanchard, Kloppenburg, and Taylor, 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).

Attorney Erica Bauer, appointed counsel for Niko Forbes, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Forbes has filed a response, and Attorney Bauer has filed a supplemental no-merit report. On independently reviewing the entire record, as well as the no-merit report, response, and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

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

Forbes reached a global plea agreement with the State that resolved multiple drug charges across several cases. As part of the plea agreement, Forbes pled guilty to the following charges in the two criminal cases here: (1) one count of first-degree reckless homicide by delivery of a controlled substance; and (2) one count of conspiracy to possess with intent to deliver more than fifty grams of heroin. The circuit court imposed concurrent sentences of fourteen years of initial confinement and nine years of extended supervision on the homicide and conspiracy convictions.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Forbes' guilty pleas. We agree with counsel's assessment that a challenge to Forbes' pleas would be wholly frivolous. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Forbes signed, satisfied the court's mandatory duties to personally address Forbes and determine information such as Forbes' understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering the pleas, and the direct consequences of the pleas. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to Forbes' sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence

complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, Forbes was afforded the opportunity to personally address the court before the sentence was imposed. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Forbes’ rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Forbes faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (quoted source omitted)). The court granted the State’s uncontested request for \$5,512 in restitution in the homicide case.

The circuit court also addressed Forbes’ eligibility for early release programming. The court found that Forbes was statutorily ineligible for the Substance Abuse Program (SAP) and for the Challenge Incarceration Program (CIP) on the homicide conviction, *see* WIS. STAT. §§ 302.045(2)(c), 302.05(3)(a)1., and on that basis found that he was not eligible for programming on the concurrent sentence for the conspiracy charge. The court noted that Forbes would not be eligible for CIP based on age by the time he finished serving his concurrent sentences in this case and began serving his consecutive sentences for his convictions of two counts of delivery of heroin in a separate case. However, the court granted Forbes’ request to

find Forbes eligible for CIP on the delivery convictions in case of a subsequent change to the statutory age requirements.²

Finally, the circuit court granted Forbes' postconviction motion seeking 636 days of sentence credit on both counts.

In his response to the no-merit report, Forbes argues that there is arguable merit to sentence modification and ineffective assistance of counsel claims. Counsel has filed a supplemental no-merit report concluding that none of Forbes' assertions support a claim of arguable merit. This court agrees that there are no issues of arguable merit based on the assertions in the no-merit response.

In regards to sentencing, Forbes argues that the circuit court did not consider the proper sentencing factors under *Gallion*. Rather, he argues that the court simply imposed the same total sentence received by Forbes' co-defendant, Ashley Stone. See *State v. Halbert*, 147 Wis. 2d 123, 432 N.W.2d 633, *overruled on other grounds by State v. Speer*, 176 Wis. 2d 1101, 501 N.W.2d 429 (1993) (“[I]t is improper for a court to approach sentencing decisions with an inflexibility that bespeaks a made-up mind.”). Forbes also argues that the circuit court relied on inaccurate information at sentencing as to Forbes' involvement in bringing drugs into the

² This court previously granted no-merit counsel's motion to consolidate the no-merit appeal for the case regarding the delivery convictions with these no-merit appeals. Counsel filed a consolidated no-merit report as to all three cases, and Forbes filed a no-merit response addressing all three cases. This court then issued an order in the consolidated appeals questioning whether there would be arguable merit to further proceedings seeking eligibility for SAP. In response, counsel informed this court that she determined that there would be arguable merit to a postconviction motion seeking SAP eligibility, but only as to the delivery case. On that basis, counsel moved to sever the appeal in the delivery case from these two appeals. Accordingly, this court severed the delivery case from these appeals, rejected the no-merit report, and extended the time for Forbes to file a postconviction motion or notice of appeal in the delivery case. Because we have severed the no-merit appeal in the delivery case from these cases, we do not address arguments in the no-merit response that are specific to that case, including Forbes' argument related to his eligibility for programming on the delivery counts.

community and his upbringing. *See State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1 (“A defendant has a constitutionally protected due process right to be sentenced upon accurate information.”). Specifically, Forbes cites to the court’s statements that: (1) compared to Stone, Forbes “[was] a more prominent figure in bringing these type of drugs into this community ... from outside the area,” which the court considered “directly ... relevant to the sentence,” and (2) during Forbes’ childhood, his mother moved their family because she was “trying to get them away from a drug culture.” Forbes contends that there was no evidence that Forbes was bringing drugs into the community that he obtained from outside of the community. He contends that, contrary to the court’s statement regarding his childhood, every area he lived in as a child was unsafe and surrounded by drug culture. Additionally, Forbes argues that there would be arguable merit to a motion for sentence modification because the court mistakenly believed that Forbes would be eligible for CIP for his other convictions that ran consecutively to the sentences in these cases.

We conclude that it would be wholly frivolous to argue that the circuit court imposed a sentence based entirely on the sentence that Forbes’ co-defendant, Stone, received, rather than on the *Gallion* sentencing factors. While the circuit court noted the sentence that Stone had received, the court also noted the differences between Forbes’ and Stone’s cases. The court explained that it considered how the sentencing factors applied to Forbes individually in reaching its sentencing decision. Therefore, the court did not impose a predetermined sentence.³

³ To the extent that Forbes argues that the circuit court was required to consider federal sentencing guidelines, we also conclude that argument would lack arguable merit. Our supreme court has rejected the invitation to require the use of federal sentencing guidelines. *See In the Matter of Judicial Admin.: Felony Sent. Guidelines*, 120 Wis. 2d 198, 200-01, 353 N.W.2d 793 (1984).

We also conclude that there would be no arguable merit to Forbes' argument that the circuit court relied on inaccurate information that Forbes brought drugs into the community and that Forbes' family had moved away from an unsafe area surrounded by drug culture during Forbes' youth. The information before the court included reports that Forbes brought heroin to Wisconsin from Illinois, and thus the record supports the court's finding that Forbes was moving drugs into the area. Additionally, the court did not find that Forbes had moved to an area that was safe and not surrounded by a drug culture during his childhood. Rather, the court stated that, after Forbes' brother was killed in a housing project in Chicago, Forbes' mother "left the area trying to get them away from a drug culture" or an "unsafe area." As to those facts, the defense's alternative sentencing report indicated that Forbes grew up in a housing project in Chicago that was notorious for crime; that Forbes' family moved several times during his childhood; and that, for safety reasons, Forbes' mother cut ties with everyone they knew in the area after they moved away and his brother was killed during a visit. Thus, the court's comments were supported by the record, and a claim that the court relied on inaccurate information at sentencing would lack arguable merit. *See Tiepelman*, 291 Wis. 2d 179, ¶9.

We also conclude that there would be no arguable merit to a postconviction motion for sentence modification based on the circuit court's understanding of Forbes' program eligibility for CIP on his sentences for delivery of heroin in his separate case, which were imposed consecutively to these cases. As set forth above, the court specifically acknowledged that Forbes would not be eligible for CIP based on age when he began serving his sentences on his delivery convictions. We conclude that it would be wholly frivolous to argue that Forbes' ineligibility for CIP in the delivery case was highly relevant to the imposition of the sentences in these cases. *See State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (new factor is "'a fact or

set of facts highly relevant to the imposition of sentence” that was not known to the sentencing court, ““either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties” (quoted source omitted)). Therefore, we conclude that there was no arguable merit to a sentence modification motion.

Forbes also contends that there is arguable merit to his assertion that trial counsel was ineffective because counsel had a conflict of interest “due to financial discrepancies and misapprehension of circumstances.” Forbes contends that his trial counsel was ineffective by failing to: (1) investigate whether the State’s delay in arresting Forbes resulted in the loss of evidence or move to dismiss based on the pre-arrest delay; (2) interview potential alibi witnesses or retrieve videotape footage to support an alibi defense; (3) pursue dismissal based on a *Riverside* violation; or (4) move to suppress evidence related to a cellular phone or attempt to prove that Forbes did not possess or own the cellular phone involved in the charged offenses.

We conclude that there would be no arguable merit to a claim that Forbes was denied the effective assistance of counsel. Nothing in the record or the no-merit response would support a nonfrivolous argument that Forbes’ trial counsel had a conflict of interest that rendered counsel ineffective. Moreover, there are no facts in the record or in the no-merit response that would support a nonfrivolous claim that Forbes’ trial counsel was ineffective by failing to investigate any possible prejudice to Forbes based on pre-arrest delay or failing to move to dismiss on that basis. In particular, Forbes does not identify any actual evidence that was lost due to any period of delay. In regards to Forbes’ alibi argument, he fails to identify or explain what alibi any witness would have provided to the charged offenses. Forbes also does not explain what the videotape footage he argues his counsel should have obtained would have shown or how it would have supported an alibi as to any of the charged offenses.

Forbes also argues that his trial counsel was ineffective by failing to pursue dismissal based on a *Riverside* violation. However, the remedy for a *Riverside* violation is generally dismissal without prejudice. See *State v. Golden*, 185 Wis. 2d 763, 769, 519 N.W.2d 659 (Ct. App. 1994) (failure to conduct a probable cause hearing within forty-eight hours of arrest is not a jurisdictional defect and is not grounds for dismissal with prejudice unless the delay prejudiced the defendant's right to present a defense). Here, there is no indication that Forbes was prejudiced by a *Riverside* violation.

Finally, Forbes contends that his trial counsel was ineffective by failing to move to suppress evidence related to a cellular phone or attempt to prove that Forbes did not possess or own the cellular phone involved in the charged offenses. It appears that Forbes is referring to the criminal complaint for his homicide conviction. The complaint states that: (1) text messages on the victim's phone indicated that the victim and Forbes were communicating about Forbes supplying the victim with heroin in the days leading up to her death; (2) when Forbes was arrested, a phone with the number associated with Forbes in the victim's phone was located in Forbes' vehicle; and (3) additional incriminating text messages were located on the phone found in Forbes' vehicle. However, there are no facts in the record or in the no-merit response that would have supported a suppression motion. Moreover, Forbes does not explain what facts would have supported an argument that he did not possess or own the phone recovered from his vehicle. We discern no arguable merit to a claim of ineffective assistance of counsel based on counsel's failure to pursue any issue related to the cell phone.

On our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Erica Bauer is relieved of any further representation of Niko Forbes in these matters. *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