



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 18, 2025

To:

Hon. Troy D. Cross
Circuit Court Judge
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

John Blimling
Electronic Notice

Kathleen A. Lindgren
Electronic Notice

Joshua Wayne Birdsill, 524321
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2024AP686-CRNM State of Wisconsin v. Joshua Wayne Birdsill (L.C. # 2022CF546)

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 Kathleen Lindgren, appointed counsel for Joshua Birdsill, has filed a no-merit report concluding that no grounds exist to challenge Birdsill's conviction and sentence for two counts of burglary. Birdsill has filed a response challenging the effectiveness of his counsel's representation at sentencing. On our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

The State charged Birdsill with three counts of burglary. Pursuant to a plea agreement, Birdsill pled no-contest to two counts of burglary and the third count, as well as two counts of burglary in a separate case, were dismissed and read-in for sentencing. The court sentenced Birdsill to a total of ten years of initial confinement and ten years of extended supervision, consecutive to any other sentence Birdsill was already serving.

The no-merit report addresses whether there would be arguable merit to a challenge to Birdsill's pleas. 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 Birdsill signed, satisfied the court's mandatory duties to personally address Birdsill and determine information such as Birdsill's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering 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. We agree with counsel's assessment that a challenge to Birdsill's pleas would lack arguable merit. Valid guilty pleas constitute 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 Birdsill's sentences. 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, Birdsill was afforded the opportunity to personally address the court before the sentences were imposed. The court explained that it considered facts

pertinent to the standard sentencing factors and objectives. *See State v. Gallion*, 2004 WI 42, ¶¶ 39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentences were within the maximum Birdsill faced and, given the facts of this case, there would be no arguable merit to a claim that the sentences were 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” (citation omitted)). The court made Birdsill eligible for the Substance Abuse and Challenge Incarceration Programs. We agree with counsel’s assessment that there would be no arguable merit to any challenge to the circuit court’s sentencing.

In his response to the no-merit report, Birdsill claims that his trial counsel should have obtained an independent presentence investigation report. He argues that, had his counsel done so, the circuit court would have been made aware of the extent of Birdsill’s alcohol abuse issues. He asserts that his issues with alcohol were the cause of his criminal behavior and that he has not had an opportunity for treatment.

However, details about Birdsill’s alcohol abuse issues and the connection between his issues with alcohol and his criminal behavior are set forth in the presentence investigation report that was prepared by the department of corrections and reviewed by the circuit court. Additionally, both the prosecutor and defense counsel commented on Birdsill’s issues with alcohol in their sentencing arguments. The prosecutor argued that Birdsill has “a serious alcohol problem that definitely needs addressing,” and that such treatment “could be done in prison, perhaps under a substance-abuse program.” Defense counsel also noted that Birdsill “does have a drinking problem,” but argued that the burglaries were motivated by his financial problems at the time.

The circuit court noted Birdsill’s lengthy history of burglary convictions, which included probation and prison sentences. The court found that “[e]verything has been tried up to this point and has not succeeded in making [Birdsill] stop” committing burglaries. The court therefore determined that a significant prison term was necessary to protect the public. However, the court also made Birdsill eligible for early release programming, including programming that involves substance abuse treatment. Accordingly, the information that Birdsill believes that his trial counsel should have presented was already considered by the circuit court at the time of sentencing. We therefore discern no arguable merit to this issue.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Kathleen Lindgren is relieved of her obligation to further represent Joshua Birdsill 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