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DISTRICT II

October 1, 2025

To:

Hon. Chad A. Hendee
Circuit Court Judge
Electronic Notice

Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
Electronic Notice

Thomas Brady Aquino
Electronic Notice

John Blimling
Electronic Notice

Robert T. Ely
120 E. Huron Street
Berlin, WI 54923

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

2024AP2563-CRNM	State of Wisconsin v. Robert T. Ely (L.C. #2021CF101)
2024AP2565-CRNM	State of Wisconsin v. Robert T. Ely (L.C. #2021CF157)

Before Neubauer, P.J., 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).

Robert T. Ely appeals from judgments of conviction entered upon his pleas of no contest. 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). Ely filed a response to the report. After reviewing the Record, counsel's report, and Ely's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

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

In these consolidated cases, Ely was convicted following pleas of no contest to operating a motor vehicle under the influence of a restricted controlled substance (ORCS), as a seventh offense and possession of THC, as a second and subsequent offense. Pursuant to an agreement with the State, Ely entered a plea to the two charges above, and additional charges of possession of THC as a second and subsequent offense, operating a motor vehicle while intoxicated as a seventh offense, and possession of drug paraphernalia were dismissed and read in.

The circuit court ordered that a presentence investigation be conducted and a report prepared. The court adopted the sentencing recommendations of the presentence investigator as to the ORCS conviction and ordered an eight-year prison sentence comprised of four years of initial confinement and four years of extended supervision. The court imposed one year of jail time on the THC conviction to run concurrent to the other sentence. This no-merit appeal follows.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant either must show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 272-76, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

The circuit court here conducted a standard plea colloquy, inquiring into Ely's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charges, the penalty range and other direct consequences of

the pleas, and the constitutional rights being waived. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Ely understood that it would not be bound by any sentencing recommendations. In addition, Ely provided the court with a signed plea questionnaire. Ely indicated to the court that he had signed the form and understood the information explained on that form, and he is not now claiming otherwise. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Ely's counsel stated on the Record that there was a factual basis for the plea, and there is nothing in the Record or the no-merit report that leads us to conclude otherwise. In addition, Ely indicated satisfaction with the amount of time spent with his attorney to ensure Ely understood the proceedings. Nothing in our independent review of the Record would support a claim that trial counsel rendered ineffective assistance. Ely has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Through his trial counsel, Ely filed a suppression motion seeking to suppress the results of the blood draw that Ely voluntarily consented to after being read the Informing the Accused form. The circuit court denied Ely's motion after holding a hearing. In his response to the no-merit report, Ely argues that his trial counsel was ineffective as it relates to pursuing his suppression motion. Specifically, Ely takes issue with trial counsel's failure to file a motion for reconsideration, failure to challenge the constitutionality of the blood draw because Ely was not

read his *Miranda*² rights before consenting to the blood draw, and failure to file a leave to appeal the court's denial of the suppression motion as a means to delay Ely's need to answer to the charges against him. Ely argues that these alleged failures amounted to ineffective assistance of counsel. We are not persuaded that Ely's response presents an issue of arguable merit. There is no Record support for his conclusory assertion that trial counsel rendered ineffective assistance in any regard, nor would there have been any arguable merit to a challenge to the court's denial of Ely's suppression motion.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offenses, Ely's character, and the need to protect the public. See *State v. Gallion*, 2004 WI 42, ¶¶27, 40-44, 270 Wis.2d 535, 678 N.W.2d 197. Ely had the opportunity, through his counsel, to comment on the presentence investigation report, and his counsel made two factual corrections for the court's benefit. Ely also had the opportunity to address the court directly, and did so prior to the court's imposition of sentence.

The circuit court imposed a sentence of eight years of imprisonment, comprised of four years of initial confinement and four years of extended supervision on the ORCS-seventh offense conviction. It imposed a concurrent one-year jail sentence for the THC conviction. Ely faced a mandatory minimum sentence of three years of initial confinement on the ORCS count, with a possible maximum of seven and one-half years of initial confinement, five years of extended supervision, and up to a \$25,000 fine. He also faced an additional seven and one-half years of

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

total imprisonment for the THC conviction. Under the circumstances, it cannot reasonably be argued that Ely's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the Record, we conclude there is no arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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 Thomas Brady Aquino is relieved from further representing Robert T. Ely in this appeal. *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