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DISTRICT I

October 14, 2025

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2025AP95-CRNM State of Wisconsin v. Johnny Ray Bibbins (L.C. # 2023CF469)

Before White, C.J., Colón, P.J., and Donald, J.

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).

Johnny Ray Bibbins appeals a judgment of conviction entered upon his guilty pleas to two felonies. Bibbins's appellate counsel, Attorney Jennifer Lohr, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).[1] Bibbins filed a response, and Attorney Lohr filed two supplemental no-merit reports to address the issues that Bibbins raised. Upon consideration of the no-merit reports and response, and following an independent review of the record as mandated by ***Anders***, we conclude that no

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

arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State alleged in a criminal complaint that on August 28, 2022, Milwaukee police responded to a complaint of a home invasion in the 5000 block of North 48th Street. At the residence, police found a 73-year-old woman, F.B., with duct tape around her neck. F.B. told police that "Johnny," a man she had asked to perform some home repairs, came to the home with a woman that F.B. did not know. When F.B. opened the door, Johnny punched F.B. in the face. After entering the home, Johnny and his companion brought F.B. to the basement, tied her hands and legs, struck her, and took $100 that she had concealed in her bra. Johnny then duct-taped her mouth and left with his companion. F.B. reported that she was able to free herself after several hours and realized that her car was missing.

The complaint further alleged that on January 30, 2023, police found Bibbins hiding in an attic and arrested him. During subsequent questioning, Bibbins identified F.B. from a photograph and claimed that she owed him money. Bibbins acknowledged restraining F.B. and demanding cash from her but he said that his co-actor, the mother of his child, was the person who punched F.B. Bibbins then admitted that his DNA would be on the duct tape used to cover F.B.'s mouth, and he admitted that after assaulting F.B., he and his co-actor drove away in F.B.'s car. The State charged Bibbins with four felonies, all as a party to a crime: robbery by use of force; burglary with an accompanying battery; false imprisonment; and operating a vehicle without owner's consent.

Bibbins decided to resolve the case with a plea agreement. Pursuant to its terms, the State amended the burglary charge by eliminating the allegation that Bibbins committed an

accompanying battery. Bibbins pled guilty to the amended burglary charge and to operating a vehicle without the owner's consent, both as a party to a crime. The State moved to dismiss and read in the remaining two charges against Bibbins and agreed to request imprisonment without recommending a specified length of the sentences.

The circuit court accepted Bibbins's guilty pleas, and the matters proceeded immediately to sentencing. For burglary as a party to a crime, Bibbins faced twelve years and six months of imprisonment and a $25,000 fine. *See* WIS. STAT. §§ 943.10(1m)(a), 939.05, 939.50(3)(f) (2021-22). The circuit court imposed a maximum term of imprisonment, bifurcated as seven years and six months of initial confinement and five years of extended supervision. For operating a vehicle without the owner's consent as a party to a crime, Bibbins faced three years and six months of imprisonment and a $10,000 fine. *See* WIS. STAT. §§ 943.23(3), 939.05, 939.50(3)(i) (2021-22). The circuit court again imposed a maximum term of imprisonment, bifurcated as one year and six months of initial confinement and two years of extended supervision. The circuit court ordered Bibbins to serve his sentences consecutively to each other and to any other sentence, and the circuit court found him ineligible for the challenge incarceration program and the Wisconsin substance abuse program.[2]

[2] The circuit court at sentencing also granted Bibbins the sentence credit that he requested for his time in custody from the date of his arrest on January 30, 2023, until his sentencing on September 11, 2023. Following an inquiry from the Department of Corrections, the circuit court vacated the order for sentence credit based upon a showing that all of the time at issue had previously been credited towards a revocation sentence that was separately imposed while the instant case was pending. Bibbins could not pursue an arguably meritorious challenge to the order vacating the sentence credit because his sentences in this case are consecutive to any other sentence. *See* ***State v. Boettcher***, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) ("Credit is to be given on a day-for-day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively.").

In the no-merit report, appellate counsel first examines whether Bibbins could pursue an arguably meritorious claim that he did not enter his guilty pleas knowingly, intelligently, and voluntarily. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). We agree with appellate counsel's analysis and with her conclusion that Bibbins could not mount such a claim.

We note, as did appellate counsel, that Bibbins did not sign the plea questionnaire and waiver of rights form that his trial counsel filed in advance of the plea and sentencing hearing. The form reflects, however, that Bibbins reviewed it with his trial counsel via Zoom. Bibbins also personally confirmed during the plea hearing that he had reviewed the form and its attachments with his trial counsel and that he understood the documents. Moreover, a plea questionnaire is not an essential component of the plea procedure. Rather, the questionnaire is a tool that the circuit court may use in conducting a plea colloquy. ***State v. Hoppe***, 2009 WI 41, ¶30, 317 Wis. 2d 161, 765 N.W.2d 794. In this case, our review of the record confirms appellate counsel's assessment that the plea colloquy fully satisfied the circuit court's statutory and common law obligations when accepting a guilty plea. *See* ***id.***, ¶18; WIS. STAT. § 971.08(1). There is no arguable merit to a claim that the circuit court failed to ensure that Bibbins's pleas were knowing, intelligent, and voluntary.

We also agree with appellate counsel's conclusion that Bibbins could not mount an arguably meritorious claim that the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197 (explaining that a circuit court exercises its discretion at sentencing and appellate "review is limited to determining if discretion was erroneously exercised"). The circuit court identified deterrence as the sentencing goal, *see* ***id.***, ¶41, emphasizing the need to send a message to Bibbins and to the public more broadly that "violence in our community is not and will not be tolerated." The

circuit court then discussed the sentencing factors relevant to achieving the sentencing goal, including the mandatory sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.

The circuit court found that Bibbins engaged in "shocking" violence and that the gravity of the offenses was aggravated by the age and vulnerability of the victim. Regarding Bibbins's character, the circuit court considered that he had a significant criminal record and had been in and out of prison numerous times. *See* ***State v. Fisher***, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (explaining that a substantial criminal record is evidence of character). The circuit court also expressed concern that Bibbins was 49 years old and was continuing to engage in criminal activity well into middle age. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23 (reflecting that a defendant's age and pattern of undesirable behavior are relevant sentencing considerations). As to the need to protect the public, the circuit court emphasized that Bibbins was serving a term of extended supervision at the time of the offenses in this case and did not seek services from his supervising agent but instead resorted to crime. The circuit court concluded that, in light of Bibbins's criminal history and his dangerous behavior, prison was "the only tool our community has" to prevent Bibbins from committing additional crimes.

The record shows that the circuit court considered appropriate factors in sentencing Bibbins, did not consider any improper factors, and reasonably fashioned sentences to achieve the sentencing goal. Bibbins therefore could not pursue an arguably meritorious claim that the circuit court erroneously exercised its sentencing discretion. *See* ***id.***

Further, Bibbins could not pursue an arguably meritorious claim that the maximum consecutive sentences were unduly harsh or excessive. A sentence is unduly harsh "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." ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (citation omitted). Here, Bibbins targeted an elderly woman, beat her, robbed her, tied her up, and left her in a basement while he drove away in her car. He received substantial consideration, specifically, dismissal and amendment of charges, that significantly reduced the potential penalties that he faced. The sentences that the circuit court imposed are neither shocking nor disproportionate to the offenses he committed.

In light of the foregoing, we also conclude that Bibbins could not pursue an arguably meritorious challenge to the circuit court's finding that he was ineligible for the Wisconsin substance abuse program and the challenge incarceration program. Upon successful completion of either prison program, an inmate's remaining initial confinement time is normally converted to extended supervision time. WIS. STAT. §§ 302.05(3)(c)2., 302.045(3m)(b); *but see* ***State v. Gramza***, 2020 WI App 81, ¶3, 395 Wis. 2d 215, 952 N.W.2d 836. A circuit court exercises its discretion at sentencing to determine a defendant's eligibility for these programs, but the circuit court is not required to make "completely separate findings" regarding the eligibility determinations, and we will uphold them so long as they are supported by the record and the sentencing rationale. ***State v. Owens***, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d

187; WIS. STAT. § 973.01(3g)-(3m).[3] Here, the goal of deterrence that underpinned the circuit court's decision to impose maximum consecutive sentences similarly supported the circuit court's finding that Bibbins was ineligible for "any early release programs." A challenge to the eligibility decision would lack arguable merit.

In response to the no-merit report, Bibbins asserted that he wanted to go to trial but did not do so because his trial counsel was ineffective in several ways. Attorney Lohr's supplemental no-merit reports addresses those contentions. We agree with appellate counsel's analyses and conclude that Bibbins could not pursue an arguably meritorious claim for plea withdrawal on the ground that his trial counsel was ineffective.[4]

To demonstrate ineffective assistance of counsel, a defendant must make a two-prong showing that counsel's performance was deficient and that the deficient performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To establish deficient performance, the defendant must show that counsel's performance fell below an objective standard of reasonableness. ***Id.*** at 688. To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. In the plea context, the prejudice prong requires the defendant to establish "a reasonable probability that, but for counsel's errors, [the

[3] The Wisconsin substance abuse program was formerly known as the earned release program. Pursuant to 2011 Wis. Act 38, § 19, the legislature renamed the program. It is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

[4] A defendant who enters a valid guilty plea forfeits all nonjurisdictional claims and defects, including constitutional claims, that arose before entry of the plea. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. An ineffective assistance of counsel claim, however, if alleged as a basis for plea withdrawal, is an exception to the forfeiture rule. ***State v. Villegas***, 2018 WI App 9, ¶47, 380 Wis. 2d 246, 908 N.W.2d 198. Accordingly, we consider whether Bibbins could bring such a claim.

defendant] would not have pleaded guilty and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

Bibbins suggests that his trial counsel was ineffective for failing to file a motion or request a hearing to pursue suppression of his custodial statements. *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966); ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965). At a ***Miranda-Goodchild*** hearing, the State is required to show by a preponderance of the evidence that a defendant in custody received and understood the warnings required by ***Miranda***[5] and that the defendant's admissions to police were voluntary. ***State v. Jiles***, 2003 WI 66, ¶¶25-26, 262 Wis. 2d 457, 663 N.W.2d 798.

In a supplemental no-merit report and supporting affidavit, appellate counsel states that she reviewed Bibbins's videorecorded custodial interviews and determined that Bibbins made inculpatory statements only after receiving ***Miranda*** warnings and confirming that he understood them. "[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of ***Miranda*** are rare." ***State v. Ward***, 2009 WI 60, ¶61, 318 Wis. 2d 301, 767 N.W.2d 236 (citations omitted). Appellate counsel advises that neither the video recordings nor anything else available to her shows that Bibbins's statements were involuntary. Bibbins's submissions to this court similarly do not make such a showing. Instead, Bibbins contends that his custodial statements should be suppressed because the detectives who interviewed him "lied" and

[5] Before questioning a suspect in custody, officers must inform the person of, *inter alia*, the right to remain silent, the fact that any statements made may be used at trial, the right to have an attorney present during questioning, and the right to have an attorney appointed if the person cannot afford one. *See* ***Miranda v. Arizona***, 384 U.S. 436, 478-79 (1966).

"coached" him to confess. We observe that, even assuming misstatements by the police during the custodial interviews—and Bibbins does not identify any such misstatements—deception is an interrogation tactic that courts commonly accept. ***State v. Vice***, 2021 WI 63, ¶45, 397 Wis. 2d 682, 961 N.W.2d 1.

Bibbins next asserts that he has an arguably meritorious claim that his trial counsel was ineffective for failing to prepare for trial. Appellate counsel advises that her review of trial counsel's file does not support such a claim, and Bibbins himself does not point us towards any lack of preparation. Instead, he provided this court with letters that he sent to his trial counsel. These letters reflect that Bibbins was an engaged participant in his trial preparation and provided his trial counsel with ideas for cross-examination and suggestions for countering the incriminating evidence against him. The letters, however, do not demonstrate that his trial counsel failed to prepare for trial. In sum, Bibbins fails to demonstrate any inaction by his trial counsel that affected his decision to resolve this case with a plea rather than proceed to trial.

Finally, Bibbins asserts that his trial counsel was ineffective for failing to demand a speedy trial. We agree with appellate counsel's conclusion that Bibbins was not prejudiced by this failure. A defendant facing a felony charge may demand to be tried within 90 days, but the only remedy for failure to proceed within that deadline is discharge from custody. *See* WIS. STAT. § 971.10(2), (4); ***State ex rel. Rabe v. Ferris***, 97 Wis. 2d 63, 68, 293 N.W.2d 151 (1980). In this case, however, the statutory remedy would not have been available to Bibbins, even if he had made a speedy trial demand. From the outset of these proceedings, Bibbins was in custody pursuant to his conviction in a separate case, at first because he was awaiting a hearing on revocation of his extended supervision in that matter, and then because he was reconfined

following a revocation order. Accordingly, Bibbins cannot pursue an arguably meritorious claim that he was prejudiced by counsel's failure to make a speedy trial demand under § 971.10.

Bibbins also had a constitutional right to a speedy trial. ***State v. Urdahl***, 2005 WI App 191, ¶11, 286 Wis. 2d 476, 704 N.W.2d 324. The remedy for a violation of that right is dismissal of the charges. ***Id.*** However, a one-year delay is "the bare minimum needed to trigger judicial examination" of an alleged violation of the right to a speedy trial. ***Id.***, ¶12 (citation omitted). Bibbins's trial counsel ensured that his case was resolved within a period of less than 7.5 months. Bibbins therefore could not pursue an arguably meritorious claim that his trial counsel was ineffective for failing to protect his constitutional right to a speedy trial.

We conclude that nothing before us supports an arguably meritorious claim for postconviction or appellate relief. To the extent that we have not discussed a specific issue or allegation that Bibbins has suggested as grounds for further litigation, we are satisfied that the contention is not sufficiently significant to warrant further discussion by this court.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Jennifer Lohr is relieved of any further representation of Johnny Ray Bibbins on 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