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DISTRICT I

November 4, 2025

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Circuit Court Judge
Electronic Notice

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

2025AP245-CRNM	State of Wisconsin v. Zackory John Kerr (L.C. # 2019CF20)
2025AP246-CRNM	State of Wisconsin v. Zackory John Kerr (L.C. # 2022CF4965)

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).

Zackory John Kerr appeals from judgments of conviction entered upon his guilty pleas to expelling bodily fluids at a public safety worker, operating a vehicle without owner's consent, and fleeing or attempting to elude an officer. Appellate counsel, Attorney Kathleen Henry, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).¹ Kerr did not file a response after receiving notice of his right to do so, but Attorney Henry filed a supplemental no-merit report that, among other matters, advised this

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

court of the issues that Kerr believes should be pursued, and counsel provided a detailed analysis of those issues. We have considered the no-merit report and supplement, and we have conducted an independent review of the records as mandated by *Anders*. We conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

In Milwaukee County Circuit Court Case No. 2019CF20, which underlies appeal No. 2025AP245-CRNM, the State alleged in a criminal complaint that early in the morning of January 1, 2019, police responded to a report of a fight in the 6000 block of West Lincoln Avenue, in West Allis. A man subsequently identified as Kerr ran from the police when they approached. Police spoke to a second man, D.S., who reported that Kerr had bitten D.S.'s thumb. When police made contact with Kerr, he told police that he had been hit in the face. Kerr was conveyed to Aurora West Allis Hospital, but he became combative and spat at an officer. Further investigation revealed that at the time of this incident, Kerr was out of custody on bail in a 2018 felony case with a condition that he commit no new crimes. Based on the foregoing, the State charged Kerr with both discharging bodily fluids at a public safety worker and with bail jumping.

Kerr entered pleas of not guilty and special pleas of not guilty by reason of mental disease or defect. A court-appointed psychologist examined Kerr in regard to his special pleas

and filed reports opining that, to a reasonable degree of professional certainty, there was no support for those pleas.²

Kerr remained in a trial posture but in December 2022, while he was out of custody on bond, he was arrested in connection with new charges in Milwaukee County Circuit Court Case No. 2022CF4965, which underlies appeal No. 2025AP246-CRNM. The State alleged in the criminal complaint that on December 17, 2022, Greenfield police were dispatched to the 5000 block of South 74th Street in the city of Greenfield for reports of an auto theft. At the scene, B.R.S. told officers that he had exited his Kia Sorento when a man that B.R.S. did not know got into the car and began driving it away. B.R.S. reported that he clung to the side of the vehicle and was dragged a short distance before falling off the car.

Police subsequently located the Kia and attempted to conduct a traffic stop. The driver increased his speed to 80 miles per hour and fled through city streets where the speed limit did not exceed 40 miles per hour. Officers pursuing the vehicle noted that the driver was an older white male who had a white beard and wore a baseball cap. The driver got away from the Greenfield police, but Milwaukee police located the Kia and determined that it had been abandoned after it was involved in a crash. Milwaukee police next observed a white male who matched the description of the Kia's driver walking in a gas station near the crash site and then saw that man climbing into the rear passenger seat of a Hyundai at the gas station. Police

² Kerr's first trial attorney requested an examination in regard to Kerr's special pleas early in the proceedings. Kerr withdrew his special pleas after the examining psychologist filed a report stating that they lacked support. Represented by successor counsel, Kerr subsequently re-entered his special pleas, resulting in a second examination by the same psychologist and a second report stating that no support existed for the pleas.

approached the Hyundai's driver, who said that the man had "just walked up and got in her car." Milwaukee police removed the man from the Hyundai and identified him as Kerr.

A subsequent search of the Kia uncovered a canvas bag with items from a pet store. Police reviewed surveillance video recorded at a Greenfield Petco, which showed Kerr walking into the store and then leaving with a bag, without stopping to pay for anything. The value of the pet store items found in the canvas bag was \$815.35. The State charged Kerr with operating a vehicle without owner's consent, second-degree recklessly endangering safety, fleeing or eluding an officer, and retail theft.

Kerr decided to resolve both the 2019 and 2022 cases with a plea agreement. Pursuant to its terms, he pled guilty in Case No. 2019CF20, to discharging bodily fluids at a public safety worker, and he pled guilty in Case No. 2022CF2965, to both operating a vehicle without the owner's consent and to fleeing or eluding an officer. The State moved to dismiss and read in the remaining charges in those two cases and to request a prison sentence without recommending a length of the aggregate term.³

The matters proceeded to sentencing. For the crime of discharging bodily fluids at a public safety worker, Kerr faced a maximum penalty of three years and six months of imprisonment and a \$10,000 fine. *See* WIS. STAT. §§ 941.375(2), 939.50(3)(i) (2019-20). The circuit court imposed two years and three months of imprisonment, bifurcated as one year and three months of initial confinement and one year of extended supervision. For operating a

³ The records in these matters show that the 2018 case that supported the allegation of bail jumping in case No. 2019CF20, was dismissed on the State's motion based on witness unavailability and the prosecutor's related concerns regarding the strength of the charges. The dismissal preceded resolution of the matters underlying these appeals and was not a consideration in the plea negotiations.

vehicle without owner’s consent, Kerr faced a maximum penalty of six years of imprisonment and a \$10,000 fine. *See* WIS. STAT. § 943.23(2)(a), 939.50(3)(h) (2021-22). The court imposed four years and three months of imprisonment, bifurcated as two years and three months of initial confinement and two years of extended supervision. For fleeing or attempting to elude an officer, Kerr faced a maximum penalty of three years and six months of imprisonment and a \$10,000 fine. *See* WIS. STAT. §§ 346.04(3), 346.17(3)(a), 939.50(3)(i) (2021-22). The court imposed an evenly bifurcated two-year term of imprisonment. The court ordered Kerr to serve his three sentences consecutively and ordered him to pay \$1,183 in restitution in connection with his operation of the Kia Sorento.⁴

In the no-merit report, appellate counsel first examines whether Kerr could pursue an arguably meritorious claim for plea withdrawal on the ground that his guilty pleas were not entered knowingly, intelligently, and voluntarily. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). At the outset of the plea hearing, the circuit court established that Kerr had signed a plea questionnaire and waiver of rights form in each case and that he understood the contents of the forms and their attachments. *See State v. Pegeese*, 2019 WI 60, ¶¶36-37, 387 Wis. 2d 119, 928 N.W.2d 590. The court then conducted a colloquy with Kerr that complied with the court’s obligations when accepting a plea other than not guilty. *See id.*, ¶23; *see also* WIS. STAT. § 971.08(1). The records—including the plea questionnaire and waiver of rights

⁴ The circuit court at sentencing also granted Kerr 463 days of credit against his sentence in Case No. 2019CF20, and 159 days of credit against his sentence in Case No. 2022CF4965. We entered an order directing appellate counsel to address whether Kerr could pursue additional sentence credit in the latter case. Appellate counsel filed a supplemental no-merit report with supporting exhibits reflecting that in postconviction proceedings, Kerr successfully pursued additional sentence credit in that matter. *See* WIS. STAT. RULE 809.32(1)(f). Upon review of the records and supplemental materials, we agree with appellate counsel’s conclusion that further proceedings in regard to sentence credit would lack arguable merit.

forms and addenda, the attached documents, signed by Kerr, describing the elements of the crimes to which he pled guilty; and the plea hearing transcript—demonstrate that Kerr entered his guilty pleas knowingly, intelligently, and voluntarily. We agree with appellate counsel that further pursuit of this issue would be frivolous within the meaning of *Anders*.⁵

We next consider 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. The records reflect that the court identified deterrence and protection of the public as the primary sentencing goals, and the court discussed the factors that it viewed as relevant to achieving those goals. See *id.*, ¶¶41-43. The court’s discussion included consideration of the mandatory sentencing factors, namely, “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 sentences selected were well within the maximum sentences allowed by law and cannot reasonably be characterized as unduly harsh or unconscionable. *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. A challenge to the sentences would lack arguable merit.

We next consider whether Kerr could pursue an arguably meritorious challenge to the order that he pay restitution in the amount of \$1,183. We conclude that he could not do so. Kerr stipulated to restitution in the amount imposed. See WIS. STAT. § 973.20(13)(c). A challenge to

⁵ Although appellate counsel does not discuss the issue, we observe both that the circuit court did not conduct a personal colloquy with Kerr regarding his withdrawal of his special pleas to the charges in Case No. 2019CF20, and that the absence of such a personal colloquy does not constitute an arguably meritorious basis for relief. Cf. *State v. Francis*, 2005 WI App 161, ¶¶22, 26-27, 285 Wis. 2d 451, 701 N.W.2d 632 (holding that a defendant who is apparently competent may implicitly withdraw a plea of not guilty by reason of mental disease or defect by entering a guilty plea).

the restitution order therefore would be frivolous within the meaning of *Anders*. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (holding that a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

Appellate counsel also discusses Kerr’s contention that the circuit court lacked personal and subject matter jurisdiction in Case No. 2022CF4965, because Milwaukee police officers “captured” Kerr, but “Greenfield police retrieved him and took him to Greenfield for booking.” Counsel explains: “Kerr believes the Milwaukee police had to book him first” but, because “the Greenfield police booked him first, the charges [in Case No. 2022CF4965] are null and void.” We agree with appellate counsel that any such claims would be frivolous within the meaning of *Anders*.

“[T]he essential element of personal jurisdiction in a criminal action is the sufficiency of the complaint, rather than the process by which the defendant’s presence in court is secured.” *State v. Jennings*, 2003 WI 10, ¶26, 259 Wis. 2d 523, 657 N.W.2d 393 (citation omitted). Accordingly, the arrest and booking process is not material to a determination of personal jurisdiction. Moreover, challenges to personal jurisdiction are forfeited by a valid guilty plea. See *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (citation omitted) (stating the general rule that a guilty plea forfeits “all nonjurisdictional defects, including constitutional claims” preceding entry of the plea); *Skindzelewski v. Smith*, 2020 WI 57, ¶20, 392 Wis. 2d 117, 944 N.W.2d 575 (explaining that the rule applies to objections to personal jurisdiction).

The rule that a valid guilty plea forfeits all defects preceding the plea does not apply to claimed defects in subject-matter jurisdiction. See *State v. Schroeder*, 224 Wis. 2d 706, 711-12,

593 N.W.2d 76 (Ct. App. 1999). Wisconsin circuit courts, however, have “original subject matter jurisdiction over ‘all matters civil and criminal.’ Accordingly, a circuit court is never without subject matter jurisdiction.” *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶1, 273 Wis. 2d 76, 681 N.W.2d 190 (citation omitted). A challenge to the circuit court’s subject matter jurisdiction would therefore lack arguable merit.

Our independent review of the records does not disclose any other potential issues warranting discussion. We conclude that further postconviction or 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 Kathleen Henry is relieved of any further representation of Zackory John Kerr 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