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DISTRICT II

January 14, 2026

To:

Hon. Michael J. Aprahamian
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

John Blimling
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David Malkus
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Ellis J. Spates #222577
Community Reintegration Center
8885 S. 68th Street
Franklin, WI 53132

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

2025AP1805-CRNM State of Wisconsin v. Ellis J. Spates (L.C. #2023CF1947)

Before Neubauer, P.J., Gundrum, 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).

Ellis J. Spates appeals a judgment of conviction, entered following his guilty plea, for attempting to flee or elude an officer. 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). Spates was advised of his right to file a response, and has filed both a response and an amended response. After reviewing the Record, counsel's report, and Spates's responses, we conclude that there are

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

no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

According to a criminal complaint, police were looking for a specific vehicle that had been involved in a retail theft earlier that day. Around 12:35 a.m. the following morning, an officer on patrol found the suspect vehicle. The officer also observed that the vehicle was speeding, had a dark tint, and had a suspended registration. The officer stopped the vehicle. Spates was driving. He appeared "extremely nervous" and told the officer that "he may have a warrant." The officer checked Spates's information and learned Spates's license was revoked, he was required to have an ignition interlock device ("IID") installed on any vehicle he was operating (the vehicle he was driving did not have an IID installed), and he had an active warrant. When the officer asked Spates to step out of the vehicle, Spates drove off.

The officer pursued Spates. The pursuit reached speeds of 77 miles per hour in posted 25 miles-per-hour zones. During the pursuit, Spates ran a red light and extinguished his headlights in an attempt to black out the vehicle. Police successfully employed a tire deflation device, and Spates abandoned the vehicle. Officers pursued Spates on foot, and he was eventually apprehended. The State charged Spates with attempting to flee or elude an officer, obstructing an officer, operating a motor vehicle while revoked, and failing to install an IID.

Pursuant to a plea agreement, Spates pled guilty to attempting to flee or elude an officer, and the remaining charges were dismissed and read in. The State agreed to recommend an unspecified prison sentence. The circuit court sentenced Spates to 17 months' initial confinement and 2 years' extended supervision. This no-merit appeal follows.

The no-merit report addresses potential issues of whether Spates's pleas were knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised its discretion at sentencing.

With regard to the circuit court's plea colloquy, appellate counsel points out that the court did not expressly ask Spates whether his plea had been improperly induced by any promises (the court did confirm with Spates that no one threatened him in order to make him plead guilty). However, counsel advises this court that there is no merit to seek plea withdrawal on this basis because "for reasons that are outside of the court record, undersigned counsel is unable to allege that Mr. Spates pled guilty based on a promise." We agree with counsel that there is no arguable merit to seek plea withdrawal on this basis. *See* ***State v. Brown***, 2006 WI 100, ¶39, 293 Wis. 2d 594, 716 N.W.2d 906 (motion for plea withdrawal based on plea colloquy deficiency must "allege that the defendant did not know or understand the information that should have been provided at the plea hearing").

The remainder of the circuit court's plea colloquy sufficiently complied with the requirements of ***Brown***, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Spates was waiving, and other matters. The Record shows no other ground to withdraw the plea. We therefore agree with counsel's analysis and conclusion that any challenge to the validity of Spates's plea would lack arguable merit.

With regard to the circuit court's sentencing discretion, our review of the Record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the

maximum authorized by law. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was not so excessive so as to shock the public's sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the court's sentencing discretion.

As previously stated, Spates filed two responses to counsel's no-merit report.[2] He first argues trial counsel was ineffective for failing to appropriately advise the circuit court that he has "severe mental or emotional disturbance (PTSD) Post-Traumatic Stress Disorder." Spates elaborates "[t]he traffic stop has information that was left out[,]" specifically, that he purportedly fled from officers because of his PTSD. Spates next asserts that the court should have made him eligible for prison programming at sentencing because Spates has a substance abuse disorder. Finally, Spates objects to the State's sentencing comments.

To establish ineffective assistance of counsel based on Spates's claim that he fled police because of his alleged PTSD, Spates would have to show that counsel's performance fell below an objective standard of reasonableness, and that Spates was prejudiced as a result. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). However, nothing in the Record reflects Spates's current claim that he fled from officers because of his claimed PTSD. Although defense counsel argued at sentencing that Spates fled because he was very nervous, the circuit court rejected that argument, noting:

> The argument of somebody being scared and just driving away kind of go out the window of this when you're driving at 77 miles an hour in the city, that you're driving 55 miles an hour down

[2] To the extent Spates's responses include assertions not specifically addressed in this opinion, we have considered those assertions and conclude they would not support any issues of arguable merit.

> St. Paul Avenue…. It's dangerous. Your conduct showed no regard for the safety of others. You made a choice to run. Any thought that you were nervous and had to run for some reason by no means justifies driving the speed you did.

Additionally, the Record reflects that at the plea hearing, Spates personally and unequivocally advised the circuit court that the criminal complaint was "[a]bsolutely" accurate and that the court could rely on it to establish a factual basis for the fleeing count. Spates also advised the court that he was not receiving treatment for any mental illness or disorder, which would include his current claim of PTSD. Then, at sentencing, during his allocution, we observe that Spates never told the court he fled because of his PTSD. Instead, Spates told the court that he did what he did because he was helping a female friend avoid heroin. Based on the above, we conclude there is no issue of arguable merit as to whether counsel was ineffective in regard to Spates's current claim of PTSD. *See* ***id.***

We next turn to Spates's assertion that the circuit court erred by denying him prison programming. Sentencing decisions—including decisions on a defendant's eligibility for the substance abuse program—are discretionary; we review only whether the court erroneously exercised its discretion. *See* ***State v. Owens***, 2006 WI App 75, ¶7, 291 Wis. 2d 229, 713 N.W.2d 187. Here, the Record reflects the court was aware of Spates's history with cocaine, but then determined that based on the gravity of the offense, Spates's criminal history, which included a previous fleeing conviction, and the need to protect the public from the reckless driving, prison programming was not appropriate. There is no arguable merit to challenge the court's discretionary determination regarding prison programming. *See* ***id.***, ¶8.

Finally, Spates objects to the State's sentencing comments. At sentencing, the State advised the circuit court:

> I did provide jail calls to [defense counsel] in this case as we were set for a speedy trial. At times Mr. Spates in these calls is admitting to his family that he ran from police. At other times, this is everyone else's fault, he's being stopped because of the color of his skin. That's the only, you know, offense that he's committed in Waukesha County is that he's black. Clearly that is untrue as the vehicle had dark tint, the registration was suspended, and he's speeding.

In his no-merit response, Spates asserts that he never made those statements in the recorded jail calls.

However, Spates's claims are belied by the Record because at sentencing, defense counsel advised the circuit court that she had reviewed the jail calls provided by the State and she emphasized that "[p]art of what's conveyed in the jail calls … is that he's sorry for what he did…. And he definitely told his family that the only reason that he's in jail is because of what he did. I heard him say those words … in those jail calls."

In any event, there is no indication in the Record that the circuit court relied on the jail calls when it sentenced Spates. *See* ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1 (To establish a due process violation at sentencing, the defendant must establish that there was information before the court that was inaccurate, and that the court actually relied upon the inaccurate information.). At sentencing, the court never mentioned the jail calls, and it instead sentenced Spates based on the gravity of the offense, his criminal record, and the need to protect the public. There is no arguable basis to challenge Spates's conviction based on the State's reference to the jail calls. *See* ***id.***

Our independent review of the Record discloses no other potential issues for appeal. This court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Spates further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved from further representing Ellis J. Spates 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