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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 II

January 21, 2026

To:

Hon. William J. Domina
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

John Blimling
Electronic Notice

Michael S. Holzman
Electronic Notice

Bobby P. Somsak, #433812
Oakhill Correctional Inst.
P.O. Box 938
Oregon, WI 53575-0938

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

2025AP902-CRNM State of Wisconsin v. Bobby P. Somsak (L.C. #2022CF325)

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

Bobby P. Somsak appeals from a judgment of conviction for delivery of cocaine, as a second or subsequent offense, entered on a jury verdict. 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). Somsak was sent a copy of the report and advised of his right to file a response—he has not done so. Upon consideration of the report and an independent review of the record, we

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

conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Somsak with two counts of delivery of between one and five grams of cocaine, both as a second or subsequent offense, after he allegedly twice sold cocaine to a confidential informant. The second transaction was captured in both audio and video recordings, but the attempt to record the first transaction was only partly successful. Following a trial, a jury convicted Somsak of count two and acquitted him on count one. The circuit court sentenced him to three years of initial confinement followed by three years of extended supervision, consecutive to a sentence Somsak was serving on another conviction. This no-merit appeal follows.

The no-merit report addresses: (1) whether the State produced sufficient evidence of Somsak's guilt; (2) whether the circuit court erroneously exercised its discretion in sentencing Somsak; and (3) whether any of the court's rulings at Somsak's trial amounted to reversible error. We address each issue in turn below.

The no-merit report first addresses whether the evidence at Somsak's jury trial was sufficient to support his conviction. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

Our review of the trial transcripts persuades us that the State produced ample evidence to convict Somsak of delivery of cocaine. That evidence included extensive audio and video recordings depicting a transaction in which Somsak obtained drugs from his supplier and then

transferred them to the confidential informant in exchange for \$250. The circuit court agreed with the jury's assessment, noting at sentencing that the "real time, real live" evidence established that Somsak was involved in a cocaine-delivery transaction. Based on our review of the record, we agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

A challenge to Somsak's sentence would also lack arguable merit. Our review of a sentence determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that the defendant was afforded an opportunity to comment on the PSI and address the court. The court proceeded to consider the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court concluded that a prison term was necessary to protect the community and to give Somsak an opportunity for addiction treatment.

Conviction for delivery of between one and five grams of cocaine carries a maximum prison sentence of 12 years, 6 months, *see* WIS. STAT. §§ 961.41(1)(cm)1r (classifying the offense as a Class F felony), 973.01(2)(b)6m and (d)4 (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony). Somsak also faced an additional four years of imprisonment as a second or subsequent drug offender. *See* WIS. STAT. § 961.48(1)(b). The circuit court imposed a prison sentence of 6 years comprised of three years of initial confinement followed by three years of extended supervision. Under these circumstances, it cannot reasonably be argued that Somsak'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).

The no-merit report further addresses whether there would be any arguable merit to a challenge to any of the circuit court's rulings during the trial. The report concludes that there was one instance in which the trial court made an erroneous ruling over Somsak's hearsay objection, but it was harmless error, and cites to no instances of plain error at any phase of the trial that would support an appeal. This court is satisfied that the no-merit report correctly analyzes the issues it raises regarding the court's rulings as without merit, and we will not discuss them further.

Finally, our independent review of the record—including voir dire, jury instructions, the colloquy surrounding Somsak's decision to exercise his right to not testify, opening statements, and closing arguments—does not disclose any potentially meritorious issue for appeal. *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. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Michael S. Holzman of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Michael S. Holzman is relieved from further representing Bobby P. Somsak 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