OFFICE OF THE CLERK
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 I

February 3, 2026

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Rex Anderegg
Electronic Notice

Michael C. Sanders
Electronic Notice

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

2023AP1321-CR State of Wisconsin v. Ronald R. Brooks (L.C. # 2017CF4992)

Before White, C.J., Colón, P.J., and Geenen, 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).

Ronald R. Brooks appeals from a judgment, entered on his guilty plea, convicting him of one count of possession with intent to deliver a schedule I or II narcotic drug (fentanyl), contrary to WIS. STAT. § 961.41(1m)(a) (2023-24).[1] He also appeals from that part of an order denying his postconviction request to reconsider a motion to dismiss that was denied earlier in the case. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. The judgment and order are summarily affirmed.

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

Between 2014 and October 2017, multiple law enforcement agencies were investigating Brooks, who had been identified as a "kilogram quantity supplier of heroin and cocaine to the Milwaukee area." In August 2017, a federal grand jury indicted Brooks on three counts of possession with intent to deliver heroin and one count of intentionally distributing heroin, based on Brooks's activities in Chicago in March 2017. In October 2017, the State charged Brooks with six counts of delivery of heroin that occurred in Milwaukee in October 2014, July 2015, October 2015, June 2016, January 2017, and September 2017. The State also charged Brooks with one count each of possession with intent to deliver heroin, possession with intent to deliver a schedule I or II narcotic drug (fentanyl), and possession of a firearm by a felon, based on items recovered during Brooks's arrest on September 13, 2017.

In September 2019, Brooks pled guilty to one of the federal counts. In November 2019, Brooks moved to dismiss the state charges, arguing they were barred by his federal conviction. The circuit court denied the motion, concluding that "[e]ach charge in the state and federal counts involve separate and discrete volitional acts." Brooks then pled guilty to the state charge of possession with intent to deliver fentanyl.

The circuit court sentenced Brooks to twelve years' imprisonment. Brooks filed a postconviction motion seeking 811 days of sentence credit. After changing attorneys, Brooks also moved for reconsideration of the pre-plea order denying his motion to dismiss, focusing now on whether the specific charge to which he pled was barred by his federal conviction. The circuit court granted the sentence credit but denied reconsideration. Brooks appeals.

Under WIS. STAT. § 961.45, "[i]f a violation of [ch. 961] is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for

the same act is a bar to prosecution in this state." This section "provides a form of statutory double jeopardy protection that applies in the context of controlled substance offenses under [ch.] 961." ***State v. Hansen***, 2001 WI 53, ¶10, 243 Wis. 2d 328, 627 N.W.2d 195. Its effect, in the context of controlled substance prosecutions, "is to abrogate the 'dual sovereignty doctrine,'" under which there is "no constitutional bar to successive prosecutions for the same offense by different sovereigns." *See* ***id.*** (citations omitted). That is, § 961.45 "bars a Wisconsin prosecution under [ch.] 961 for the same conduct on which a prior federal conviction is based."[2] ***Hansen***, 234 Wis. 2d 328, ¶44.

Brooks believes that his Wisconsin conviction for possession with intent to deliver fentanyl is barred by his federal conviction for possession with intent to deliver a controlled substance because "the state and federal statutes under which [he] was convicted [WIS. STAT. § 961.41(1m) and 21 U.S.C. § 841(a)(1)] are identical." Further, Brooks argues, all of his charges "are the result of one long-term investigation where all conduct in both cases is the same." We disagree with Brooks's conclusion that his state conviction is barred.

As an initial matter, we note that there is some confusion as to what Brooks was convicted of by the federal court. Apparently relying on the charge description on the federal judgment of conviction, Brooks says that he was convicted of *possession* with intent to distribute a controlled substance; thus, he believes, the circuit court's analysis in denying the motion to dismiss was flawed because the court thought his federal conviction was for *delivery* of a

[2] This is a different double jeopardy test than the typical "elements only" test set forth in ***Blockburger v. United States***, 284 U.S. 299, 304 (1932). *See* ***State v. Hansen***, 2001 WI 53, ¶37, 243 Wis. 2d 328, 627 N.W.2d 195 (rejecting the application of ***Blockburger*** to WIS. STAT. § 961.45).

controlled substance. However, the circuit court was correct that Brooks was convicted of delivery of a controlled substance, not possession with intent, and the federal judgment's charge description appears to be a scrivener's error.

A superseding indictment charged Brooks with several counts that alleged that Brooks "did knowingly and intentionally possess with intent to distribute a controlled substance," and Count 7, which alleged that he "did knowingly and intentionally distribute a controlled substance." The federal plea agreement document notes that Count 7 is for "distribution of a quantity of heroin," and the judgment itself states that the conviction is based on Brooks's guilty plea to Count 7 of the indictment. Our reading of the record, therefore, is that Brooks was convicted in federal court for distributing heroin, not possessing with the intent to distribute heroin.[3]

There is no question about the preclusive effect of federal convictions under WIS. STAT. § 961.41. Thus, the only real question on appeal is whether Brooks's federal conviction is "for the same act" as his state conviction.

To determine whether we are dealing with convictions for the same act, "we look to the underlying actions, the 'thing done' or the 'deed' that gave rise to … [each] conviction." ***State v. Bautista***, 2009 WI App 100, ¶15, 320 Wis. 2d 582, 770 N.W.2d 744 (footnote omitted). Thus, in ***Hansen***, the State's prosecution for possession with intent to deliver cocaine was barred by a federal conviction for conspiracy to distribute and possess with intent to distribute cocaine

[3] The discrepancy may have arisen because both distribution and possession with intent to distribute are violations of the same federal law, 21 U.S.C. § 841(a)(1). In Wisconsin, delivery and possession with intent are in separate subsections. *See* WIS. STAT. § 961.41(1)-(1m).

because both were based on Hansen's conduct on a single day. ***Id.***, 243 Wis. 2d 328, ¶¶1, 43. In ***Bautista***, the state conviction for conspiracy to deliver tetrahydrocannabinols was not barred by a federal conviction for two counts of delivering cocaine in a similar timeframe. ***Id.***, 320 Wis. 2d 582, ¶14.

Brooks's convictions are more like those in ***Bautista*** than ***Hansen***. His federal conviction was for delivery of heroin in March 2017 in Chicago; his state conviction was for possession with intent to deliver fentanyl[4] in September 2017 in Milwaukee. These charges involve different conduct and different drugs at different times in different cities. The state conviction is clearly not based on the same conduct as that resulting in the federal conviction.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

[4] Brooks also asserts that his state case only "nominally" involves fentanyl because the miniscule amount he possessed had been cut into the heroin and was not a separate narcotic, such cutting is routine, and there is no evidence that the federal government tested for fentanyl in any of the heroin Brooks had possessed. He does not further develop this argument.

Ultimately, however, the distinction makes no difference in our analysis. Brooks was charged with possession of both heroin and fentanyl by the State; he pled to the fentanyl offense contrary to WIS. STAT. § 961.41(1m)(a), not the heroin offense contrary to WIS. STAT. § 961.41(1m)(d). Moreover, we can reasonably infer that any heroin and fentanyl combination in Brooks's possession at the time of his arrest in September 2017 was not the same heroin he had sold six months earlier in Chicago.