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DISTRICT III

March 17, 2026

To:

Hon. Tammy Jo Hock
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Kathilynne Grotelueschen
Electronic Notice

Kevin Steuck
Electronic Notice

Tony Michael Flowers 309582
Kettle Moraine Correctional Inst.
P.O. Box 31
Plymouth, WI 53073

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

2024AP1250-CRNM State of Wisconsin v. Tony Michael Flowers
(L. C. No. 2021CF506)

Before Gill, J.¹

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).

Tony Flowers appeals from a judgment convicting him, based upon no-contest pleas, of one count of battery and two counts of disorderly conduct (each with domestic abuse and repeat offender enhancer), and from an order denying his postconviction motion for plea withdrawal. Attorney Kathilynne Grotelueschen has filed a no-merit report seeking to withdraw as appellate

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

counsel. *See* WIS. STAT. RULE 809.32. The no-merit report sets forth the procedural history of the case and addresses Flowers’ pleas and sentences. Flowers has filed a response to the no-merit report, reasserting his postconviction claim that he is entitled to plea withdrawal because his trial counsel, Attorney Christopher Froelich, erroneously told him that he would be eligible for the Earned Release Program (ERP). Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal. Therefore, counsel shall be allowed to withdraw, and the judgment of conviction and postconviction order will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Flowers with two misdemeanor counts of battery as domestic abuse, three misdemeanor counts of disorderly conduct as domestic abuse, one felony count of substantial battery, and one felony count of stalking resulting in bodily harm as domestic abuse—each as a repeat offender. The charges arose from three separate incidents involving the same victim.

Flowers agreed to plead no contest to one of the battery counts and two of the disorderly conduct counts as charged, with the remaining counts to be dismissed and read in. In exchange, the State agreed to recommend a term of three years’ probation with twelve months of conditional jail time. The circuit court accepted Flowers’ pleas after conducting a plea colloquy, reviewing a signed plea questionnaire with an attached elements sheet, and ascertaining that the complaint provided a factual basis for the pleas.

The circuit court proceeded directly to sentencing, where it heard from both counsel and Flowers personally. The court identified the protection of the public as its primary sentencing

goal, given the seriousness of Flowers’ lengthy criminal record and his multiple assaults on the victim while he was already on extended supervision. The court concluded that probation was inappropriate, and it sentenced Flowers to one year of initial confinement followed by one year of extended supervision on each of the counts, to be served concurrent to one another but consecutive to another sentence Flowers was already serving.² The court also imposed statutory costs and a series of conditions of supervision. When Froelich asked whether Flowers would be eligible for the ERP, the court answered that it did not find him statutorily eligible and—even if he were statutorily eligible—the court would not authorize it.

Flowers filed a postconviction motion seeking to withdraw his pleas, alleging that his pleas were not knowingly given because Froelich had misinformed him about his eligibility for the ERP. The circuit court held a *Machner* hearing at which Flowers and Froelich testified. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

Flowers testified that he originally wanted to go to trial and rejected an offer that would have required him to plead to one of the felonies, but that Froelich advised him to wait and see what better plea deal he could obtain. When discussing the pros and cons of the State’s second offer to plead to three of the misdemeanors, Froelich warned Flowers that the circuit court was not required to follow the parties’ recommendations for probation and could instead impose a prison term. Flowers asked if he would be eligible for the ERP and programming if he received a prison term, and Froelich told him “yes” because the charges were misdemeanors.

² Although the counts were misdemeanors, the maximum term of imprisonment was increased to two years as a result of the repeater allegation. *See* WIS. STAT. § 939.62(1)(a).

Although Flowers agreed that pleading to only misdemeanors looked like “a good deal,” he said he would never have accepted the deal if he had known that he was not, in fact, statutorily eligible for the ERP, because the availability of programming was a deciding factor for him. Flowers also claimed that Froelich never told him that, even if he were statutorily eligible for the ERP, the circuit court would also need to approve it. Flowers noted that he was eligible for the ERP on the sentence he was already serving and was waiting for programming.

Froelich testified that he was not aware, off the top of his head, whether WIS. STAT. ch. 940 offenses (which would include battery) were eligible for the ERP, and, when representing Flowers, he did not know whether Flowers would be eligible for programming. Froelich denied that he ever told Flowers that he would be eligible for the ERP, and he said he had no recollection of discussing the ERP with Flowers at all. Froelich also had no recollection of Flowers ever telling him that he would take the matter to trial if he did not qualify for the ERP. Froelich believed that Flowers was concerned about how long he would be confined.

Froelich further testified that his mindset at the time was that Flowers was likely to get probation (which both parties were requesting) with possible jail time (which the State was requesting), so Froelich would not have been focused on the issue of eligibility for the ERP. Froelich was also aware that qualifying for the ERP requires both a discretionary determination from the circuit court, as well as statutory eligibility. Froelich said that he asked the court about Flowers’ ERP eligibility because he was uncertain about it and wanted the court to weigh in.

The circuit court denied Flowers’ plea withdrawal motion. The court found Flowers’ claim that he would have proceeded to trial if he had known he was not statutorily eligible for the ERP incredible for several reasons. First, it was implausible that Flowers would have been

focused on the ERP when his expectation would have been that probation was likely. Second, it was implausible that an experienced attorney such as Froelich would have guaranteed Flowers that he would be eligible for the ERP knowing that the court had the discretion to approve or deny his eligibility for the ERP. Third, it was implausible that the ERP eligibility would have been the determining factor in Flowers' decision to enter his pleas when Flowers would have been facing significantly more prison time, also without eligibility for the ERP, if he had proceeded to trial on all seven counts, including two felonies.

The circuit court may properly assess the credibility of the proffered explanation for a plea withdrawal request and resolve disputes among the testimony of various witnesses. *See State v. Kivioja*, 225 Wis. 2d 271, 291, 592 N.W.2d 220 (1999). Such credibility determinations are generally not subject to appellate review. *State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238 (1999). Rather, because the circuit court is in the best position to observe witness demeanor and gauge the persuasiveness of testimony, it is the “ultimate arbiter” for credibility determinations when acting as a factfinder, and we will defer to its resolution of discrepancies or disputes in the testimony and its determinations of what weight to give to particular testimony. *Johnson v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980) (citation omitted); *see also* WIS. STAT. § 805.17(2) (“[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). This deference means that we will not overturn credibility determinations on appeal unless the testimony upon which they are based is “inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts.” *Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269.

Because the circuit court's denial of Flowers' plea withdrawal motion was based upon a credibility determination, and that credibility determination was in turn based upon testimony by counsel that was not inherently incredible or in conflict with conceded facts or the laws of nature, Flowers has no arguably meritorious plea withdrawal issue for appeal.

Upon reviewing the record, we agree with counsel's conclusion that Flowers has no arguably meritorious basis to challenge his sentences. The components of the bifurcated sentences were within the maximum available penalties. The circuit court rationally explained why it imposed the sentences based upon standard sentencing factors. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentences were not unduly harsh, given the circumstances of the case. *See generally State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (discussing the standard for unduly harsh sentences).

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction and postconviction order will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kathilynne Grotelueschen is relieved of any further representation of Tony Flowers in this matter pursuant to 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