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DISTRICT I

July 7, 2026

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Electronic Notice

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

2024AP2008-CRNM State of Wisconsin v. Dwayne Spikes (L.C. # 2018CF4885)

Before Donald, C.J., Geenen, and Petrashek, 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).

Dwayne Spikes appeals from a judgment of conviction entered upon his guilty pleas to possessing a firearm while a felon and possessing with intent to deliver a narcotic as a second or subsequent offense. Appellate counsel, Attorney Brian Patrick Mullins, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).[1] Spikes filed a response. We have considered the no-merit report and Spikes's response, and we have conducted an independent review of the record as mandated by ***Anders***. We conclude that

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

no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

As reflected in the criminal complaint, police developed information prior to October 9, 2018, that Spikes was conducting drug transactions from a Milwaukee residence on North 29th Street (the 29th Street residence) and from a West Allis residence on West Greenfield Avenue (the Greenfield Avenue residence), both in Milwaukee County. On October 9, 2018, police executed search warrants at both residences simultaneously.

The complaint further reflected that police arrested Spikes in the yard of the 29th Street residence. Upon searching his person, police found quantities of substances presumptively identified through field testing and visual inspection as heroin, ecstasy, oxycodone, and marijuana, along with $1,239 in cash and two cellphones. Police also found a handgun on the ground near where they arrested Spikes.

Upon searching the Greenfield Avenue residence, police found quantities of substances presumptively identified as cocaine base, heroin, and marijuana, as well as two handguns and an assault rifle. Police also found numerous documents in the names of Spikes and Constance Strauss, showing that they lived at the Greenfield Avenue residence. While police were executing the search warrant at Greenfield Avenue, Strauss drove up to the home. Police arrested her, and she consented to a search of her cellphone. That search revealed text messages between Strauss and Spikes in which Spikes directed Strauss to sell various narcotics to people that he indicated would be arriving at the Greenfield Avenue residence. Other messages directed Strauss to bring a gun to Spikes and specified the gun that he wanted her to bring. The complaint

further alleged that Spikes had four prior felony convictions, three involving either delivery or intent to deliver narcotics and one involving possession of a firearm by a felon.

The State initially charged Spikes with seven felonies arising from the searches at the two residences. After the State conducted additional testing on the substances seized during the searches, the State filed an additional six felony charges against him. Spikes litigated a motion to suppress all of the evidence found pursuant to the search warrants, arguing that the warrants were not supported by sworn testimony. The circuit court denied the motion after a hearing.

Spikes requested a jury trial, but on the day set for trial, he accepted a plea agreement. Pursuant to its terms, he pled guilty to one count of possessing a firearm while a felon and one count of possessing with intent to deliver a narcotic, fentanyl, as a second or subsequent offense. In exchange, the State agreed not to make a sentencing recommendation. Additionally, four counts and a weapons penalty enhancer were dismissed outright; the seven remaining counts were dismissed and read in for sentencing purposes.

The case proceeded to sentencing. For possessing a firearm while a felon, Spikes faced a 10-year term of imprisonment and a $25,000 fine. *See* WIS. STAT. §§ 941.29(1m)(a), 939.50(3)(g) (2017-18). The circuit court imposed a maximum, evenly bifurcated term. For possessing with intent to deliver fentanyl as a second or subsequent offense, Spikes faced a 19-year term of imprisonment and a $50,000 fine. *See* WIS. STAT. §§ 961.41(1m)(a), 939.50(3)(e), 961.48(1)(b) (2017-18). The court imposed a 13-year term of imprisonment bifurcated as 8 years of initial confinement and 5 years of extended supervision. The court ordered Spikes to serve the two sentences concurrently. The court found Spikes ineligible for the challenge incarceration program but eligible for the Wisconsin substance abuse program after serving

5.5 years of initial confinement, and the court granted him the 529 days of sentence credit that he requested.

We first consider whether Spikes could pursue an arguably meritorious claim for plea withdrawal on the ground that the plea hearing was inadequate to demonstrate that he entered his guilty pleas knowingly, intelligently, and voluntarily. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). We agree with appellate counsel that he could not do so.

Near the outset of the plea hearing, the circuit court established that Spikes had signed a plea questionnaire and waiver of rights form after reviewing it with trial counsel and that he understood the form and its attachments. *See* ***State v. Pegeese***, 2019 WI 60, ¶37, 387 Wis. 2d 119, 928 N.W.2d 590. The form reflected that Spikes was 38 years old and had a high school education. The court established on the record that Spikes was able to read the criminal complaint and the information and that he had discussed the charges against him with his trial counsel. The court then conducted a colloquy with Spikes that complied with a court's obligations when accepting a plea other than not guilty. *See* ***id.***, ¶23; *see also* WIS. STAT. § 971.08. The record—including the plea questionnaire and waiver of rights form and addendum; the attached jury instructions that Spikes initialed describing the elements of the crimes to which he pled guilty; and the plea hearing transcript—shows that Spikes entered his guilty pleas knowingly, intelligently, and voluntarily. *See* ***Bangert***, 131 Wis. 2d at 266-72. Further pursuit of this issue would lack arguable merit.

A defendant who enters a valid guilty plea normally forfeits all nonjurisdictional defects and defenses to the criminal charge. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. An exception is codified in WIS. STAT. § 971.31(10), which permits appellate

review of an order denying a motion to suppress evidence notwithstanding the defendant's guilty plea. Accordingly, we next consider whether Spikes could pursue an arguably meritorious challenge to the circuit court's order denying his suppression motion.

When we review a circuit court's order resolving a suppression motion, we uphold the circuit court's findings of fact unless they are clearly erroneous. ***State v. Hughes***, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. We then apply the law to those facts independently. ***Id.***

Spikes alleged that the two residential search warrants were defective because they were not supported by either an affidavit or sworn oral testimony. *See* WIS. STAT. § 968.12(2), (3). Specifically, he argued that the typed date "October 5th, 2018" appears on each search warrant above the court commissioner's signature, but the affidavits purportedly supporting the two warrants were not signed and sworn to until October 8, 2018. He contended that the evidence found pursuant to those warrants must therefore be suppressed.[2]

The circuit court held a suppression hearing and heard testimony from a detective. The detective testified that he signed the affidavits at issue in front of a notary on October 8, 2018. That same day, he brought the signed affidavits and the unsigned search warrants to a court commissioner and waited in the courtroom while the commissioner reviewed the documents. The commissioner returned the signed warrants to the detective before the detective left the courtroom. The detective acknowledged that the typewritten date "October 5th, 2018" appears

[2] Spikes also moved to suppress evidence found when police executed a warrant to search two cellphones found on his person on October 9, 2018. As grounds, he alleged that the police executed that warrant more than five days after it was signed, in violation of WIS. STAT. § 968.15(1). Spikes withdrew that motion, however, because the State obtained all of the evidence that the phones contained pursuant to a later search warrant that was executed within the applicable deadline.

on each warrant just before the commissioner's handwritten signature, but the detective testified that the date was necessarily wrong in light of his actions on October 8, 2018. No witness contradicted the detective's testimony.

The circuit court determined that the detective's testimony was credible. The court then found that the typed date of "October 5th, 2018" was a scrivener's error and that the search warrants were signed by the court commissioner on October 8, 2018, following review of the affidavits. The court's findings were supported by the detective's testimony, and thus were not clearly erroneous. In light of those findings, any claim that the search warrants were not supported by sworn affidavits would be frivolous within the meaning of ***Anders***.

We next consider whether Spikes could pursue an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court indicated that punishment, deterrence, and the protection of the community were 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 the mandatory sentencing factors of "the gravity of the offense[s], the character of the defendant, and the need to protect the public." *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The aggregate 13-year term of imprisonment imposed was far less than the aggregate 29 years of imprisonment and $75,000 in fines that Spikes faced upon conviction. Spikes therefore cannot mount an arguably meritorious claim that his sentences were excessive or shocking. *See* ***State v. Mursal***, 2013 WI App 125, ¶26, 351 Wis. 2d 180, 839 N.W.2d 173. Additionally, the circuit court's findings regarding Spikes's eligibility for the challenge incarceration program and the Wisconsin substance abuse program were supported by the record and the overall sentencing rationale. *See* ***State v. Owens***, 2006 WI

App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187. We conclude that a challenge to the court's exercise of sentencing discretion would be frivolous within the meaning of ***Anders***.

In response to the no-merit report, Spikes asserts that his trial counsel was ineffective in various ways. An ineffective assistance of counsel claim may be pursued after a valid guilty plea if the claim is presented as a basis for plea withdrawal. ***State v. Villegas***, 2018 WI App 9, ¶47, 380 Wis. 2d 246, 908 N.W.2d 198. Accordingly, we have considered whether Spikes could bring an arguably meritorious claim that his trial counsel was ineffective.

Spikes states that his trial counsel should have sought to invalidate the residential search warrants and to suppress the evidence found when they were executed on the ground that the State obtained the warrants in violation of ***Franks v. Delaware***, 438 U.S. 154 (1978). The State runs afoul of ***Franks*** when an averment in an affidavit submitted in support of a search warrant is either intentionally false or made with reckless disregard for the truth. ***Id.*** at 155-56. The ***Franks*** principle also applies to a material omission from a search warrant affidavit if the omission involves "an undisputed fact that is critical to an impartial judge's fair determination of probable cause." ***State v. Mann***, 123 Wis. 2d 375, 385-86, 388, 367 N.W.2d 209 (1985). Spikes states here that the search warrant affidavits described information that police received from a confidential informant while omitting disclosures that the informant was a "parole violator" who was "not approved by the regional chief to work in an undercover capacity."

Spikes does not demonstrate the truth of the information that he claims was improperly omitted from the affidavits. Regardless, omitted information arguably relevant to a confidential informant's credibility, such as the allegations that Spikes proffers, is not critical to an assessment of probable cause when the warrant application does not depend on the credibility of

the informant because his or her information was fresh and was corroborated by controlled buys and information collected from other sources. *See* ***United States v. Clark***, 935 F.3d 558, 565 (7th Cir. 2019); *see also* ***State v. Romero***, 2009 WI 32, ¶21, 317 Wis. 2d 12, 765 N.W.2d 756 (explaining that "[e]ven if a declarant's credibility cannot be established, the facts still may permit the warrant-issuing officer to infer that the declarant has supplied reliable information" because the reliability of the information may be established by corroboration of details sufficient to support a search warrant).

Here, the search warrant affidavits detailed the confidential informant's participation in four controlled buys of narcotics over the course of a months-long investigation of Spikes's drug trafficking. In discussing the confidential informant's involvement, the affidavits described how police searched the confidential informant before and after the controlled buys, and the affidavits described police observations of the confidential informant's movements before and after the purchases. The affidavits also described the steps that police took to confirm the information that the confidential informant provided, including searches of law enforcement databases and social media websites. Thus, the record fails to show an arguably meritorious basis for the challenge that Spikes asserts his counsel should have pursued. "Counsel does not perform deficiently by failing to bring a meritless motion." ***State v. Sanders***, 2018 WI 51, ¶29, 381 Wis. 2d 522, 912 N.W.2d 16.

Spikes next asserts that his trial counsel was ineffective for failing to move for disclosure of the confidential informant's identity pursuant to ***State v. Outlaw***, 108 Wis. 2d 112, 124-27, 321 N.W.2d 145 (1982). To prevail on such a motion, the defendant must show that the evidence will "support an asserted defense to the degree that the evidence could create reasonable doubt." ***State v. Vanmanivong***, 2003 WI 41, ¶24, 261 Wis. 2d 202, 661 N.W.2d 76.

However, as the circuit court found when addressing Spikes's pretrial motion to obtain the videos and police reports documenting the confidential informant's controlled buys, none of the charges involved the controlled buys. Rather, all of the charges stemmed from the items found when police executed the residential search warrants. Therefore, the court determined that evidence related to the controlled buys "was not relevant to the case ... and the State [wa]s not required to disclose it." The record thus does not suggest that disclosure of the confidential informant's identity could support a defense to the charges. Counsel therefore did not perform deficiently by failing to pursue such disclosure. *See* ***Sanders***, 381 Wis. 2d 522, ¶29.

Spikes next asserts that his trial counsel was ineffective for failing to seek "suppressed discovery material." Spikes does not identify any deficiency in counsel's performance because, as the record shows and as appellate counsel explains in the no-merit report, trial counsel litigated a discovery motion. The motion was unsuccessful but, as appellate counsel also explains, Spikes forfeited the opportunity to challenge the adverse ruling when he pled guilty. *See* ***Kelty***, 294 Wis. 2d 62, ¶18 & n.11. Further pursuit of this issue would lack arguable merit.

Last, Spikes appears to assert that his trial counsel was ineffective for failing to pursue suppression of evidence found on Strauss's cellphone. The record does not reveal any basis on which Spikes had standing to pursue such relief. *See* ***State v. Tentoni***, 2015 WI App 77, ¶¶7-8, 365 Wis. 2d 211, 871 N.W.2d 285 (explaining that standing may exist when an individual has a reasonable expectation of privacy in the area searched and the item seized, and holding that the defendant lacked a reasonable expectation of privacy in the content of a third party's cellphone that the defendant neither owned nor controlled). Assuming that Spikes could have demonstrated standing, however, the record does not support his claim that the search of Strauss's cellphone was "illegal." The complaint reflects that Strauss consented to the search

following her arrest. A consensual search following a lawful arrest is constitutionally sound. ***State v. Floyd***, 2017 WI 78, ¶34, 377 Wis. 2d 394, 898 N.W.2d 560.

Our independent review of the record 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 judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved of any further representation of Dwayne Spikes 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