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DISTRICT I

September 9, 2026

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County Safety Building
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You are hereby notified that the Court has entered the following opinion and order:

2025AP353-CRNM State of Wisconsin v. Bryan O. Smith (L.C. # 2020CF4168)

Before Donald, 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).

Bryan O. Smith appeals from a judgment convicting him of one count of second-degree reckless injury, use of a dangerous weapon, and one count of possession of a firearm by a felon. He also appeals from the order denying his postconviction motion for sentence modification. Appellate counsel, Pamela Moorshead, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).¹ Smith received a copy of the report, was advised of his right to file a response, and has responded. Appellate counsel filed a

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

supplemental no-merit report. We also directed counsel to file an additional supplemental no-merit report. We have independently reviewed the record, the no-merit report, the response and the supplemental reports as mandated by **Anders**. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. See WIS. STAT. RULE 809.21.

The State initially charged Smith with one count of conspiracy to commit first-degree intentional homicide, one count of first-degree reckless injury, use of a dangerous weapon, and two counts of possession of a firearm by a felon. The conspiracy charge was later amended to attempted first-degree intentional homicide. The first-degree reckless injury charge was amended to second-degree reckless injury. Ultimately, Smith pled guilty to one count of second-degree reckless injury, use of a dangerous weapon, and one count of possession of a firearm by a felon. The remaining counts were dismissed and read in. The circuit court conducted a plea colloquy with Smith and accepted his pleas. The circuit court sentenced Smith to twenty-seven years and six months of incarceration with seventeen years of initial confinement and ten years of extended supervision. Appellate counsel filed a no-merit appeal but voluntarily dismissed the no-merit appeal and filed a motion for postconviction relief in the circuit court. The motion argued that Smith was entitled to sentence modification based upon his eligibility for the substance abuse program. The circuit court denied the motion. This no-merit appeal follows.

Appellate counsel's no-merit report addresses four issues: (1) whether Smith's pleas were knowing, intelligent, and voluntary and whether there was a factual basis for the pleas; (2) whether the circuit court violated Smith's right to be free from double jeopardy when it sentenced him and then reconvened the following day to change the sentence; (3) whether the

circuit court erroneously exercised its sentencing discretion; and (4) whether the circuit court erroneously denied Smith's postconviction motion.

With regard to Smith's guilty pleas, our review of the record—including the plea questionnaire/waiver of rights form, the addendum, the jury instruction, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to Wis. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. These obligations exist specifically to help ensure the validity of any plea. The parties agreed that the court could use the facts in the criminal complaint to support the plea. We thus agree with appellate counsel's conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal.

Appellate counsel next addresses whether the circuit court violated Smith's right to be free from double jeopardy when it changed Smith's sentence one day after the initial sentencing hearing. At the initial sentencing hearing, the circuit court stated:

As it relates to count two, twelve years, six months in the Wisconsin Prison System, bifurcated by an initial term of confinement of seven years, six months, followed by extended supervision of five years, zero months. That's consecutive to count three, where you will serve ten years in Wisconsin Prison System, five years of initial confinement, followed by five years of extended supervision.

This will result in a total time of seventeen and a half years of initial confinement followed by ten years of extended supervision. Count three is consecutive to count two.

The circuit court erroneously stated that Smith's sentence totaled seventeen and one-half years of initial confinement and ten years of extended supervision when its pronounced sentence actually amounted to twelve and one-half years of initial confinement and ten years of extended

supervision. A judgment of conviction was entered showing a sentence of seven and one-half years of initial confinement and five years of extended supervision on the reckless injury count.

The following day the circuit court recalled the case and explained that it had made a mathematical error and vacated the sentence. The court stated that it had intended to impose a sentence of twelve and one-half years initial confinement and five years of extended supervision on the reckless injury count. The court noted that the change would align the sentence with the court's stated intent to impose a total of seventeen and one-half years of initial confinement followed by ten years of extended supervision.

"The Fifth Amendment to the United States Constitution protects an individual from being twice put in jeopardy for the same offense." *State v. Robinson*, 2014 WI 35, ¶21, 354 Wis. 2d 351, 847 N.W.2d 352. Where the issue concerns an individual's protection against multiple punishments, "the appropriate inquiry ... is whether the defendant has a legitimate expectation of finality in [his] sentence. If a defendant has a legitimate expectation of finality in [his] sentence, then an increase in that sentence violates double jeopardy." *Id.*, ¶3.

We agree with appellate counsel's determination that Smith did not have a legitimate expectation of finality in his sentence. The circuit court stated its intent to sentence Smith to a total of seventeen and one-half years of initial confinement followed by ten years of extended supervision at Smith's initial sentence hearing. The following day, the court reconvened to addresses its mathematical miscalculation. In his response, Smith complains of a double jeopardy violation; however, "the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *State v. Davison*, 2003 WI 89, ¶28, 263 Wis. 2d 145, 666 N.W.2d 1. Appellate counsel's no-merit report

addresses the case law on this issue and its applicability to the facts of Smith's case. We agree that there is no arguable merit to a claim of a double jeopardy violation, and we do not address this issue further.

Appellate counsel's no-merit report next addresses the circuit court's sentencing decision, which we note is a matter for the circuit court's discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider additional factors. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the court's discretion. *Id.* Our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors. The resulting sentence was within the potential maximum authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is 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).

Lastly, appellate counsel's no-merit report addresses whether the circuit court erroneously denied Smith's postconviction motion. Smith moved for resentencing arguing that the circuit court mistakenly believed that he was statutorily ineligible for the substance abuse program under WIS. STAT. §302.05(3). The motion presented his statutory eligibility as a new

factor that warranted modification of his sentence to render him eligible for the program. The postconviction court denied the motion.

A circuit court “may base a sentence modification upon the defendant’s showing of a ‘new factor.’” *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). A new factor is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties.” *Id.*, ¶40 (citation omitted). The postconviction court assumed that Smith’s statutory eligibility was a new factor, but found that it did not justify sentence modification. The postconviction court noted the sentencing objectives articulated at Smith’s resentencing hearing and stated that the circuit court clearly intended for Smith to serve the entirety of his sentence. It is clear from the postconviction court’s decision that Smith’s eligibility for the program had no impact on the circuit court’s sentencing decision. There would be no arguable merit to claim that the postconviction court erroneously denied Smith’s postconviction motion.

Smith raises multiple issues in his response to appellate counsel’s no-merit report. Upon our independent review of the record, we conclude that Smith’s claims are either sufficiently addressed by counsel’s no-merit report and supplemental reports, not supported by the record, or waived. See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (stating that a valid guilty plea waives all nonjurisdictional defects and defenses).

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of further representation of Bryan O. Smith in this matter. *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