



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

September 16, 2019

To:

Hon. Pedro Colon
Circuit Court Judge
821 W. State St.
Milwaukee, WI 53233

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Room G-8
Milwaukee, WI 53233

Dane A. Bieniek 620934
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Christopher P. August
Assistant State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202-4116

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2019AP55-CRNM State of Wisconsin v. Dane A. Bieniek (L.C. # 2017CF4384)

Before Brash, P.J., Kessler and Dugan, 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).

Dane A. Bieniek appeals a judgment of conviction entered upon his no-contest plea to theft of movable property from a person or corpse. *See* WIS. STAT. § 943.20(1)(a), (3)(e) (2017-18).¹ Appellate counsel, Attorney Christopher P. August, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Bieniek did not file a

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

response. Based upon our review of the no-merit report and the record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Bieniek and a companion, K.J.S., consumed heroin together on September 19, 2017, in an outdoor area behind a tavern in Milwaukee, Wisconsin. Video from a surveillance system monitoring the area showed that the pair appeared to inject heroin at 1:35 a.m. and that K.J.S. became unresponsive at 2:00 a.m. At approximately 7:29 a.m., Bieniek removed some property from K.J.S.'s pants pockets and then left the scene. Soon thereafter, police found K.J.S. deceased behind the tavern. The State charged Bieniek with one count of theft from a person or corpse and, because he had previously been charged with a misdemeanor in Racine County and was out of custody on bond at the time of the alleged theft, one count of misdemeanor bail jumping.

Bieniek decided to resolve the theft and bail jumping charges with a plea agreement.² He pled no contest to the theft charge and, upon entry of the plea, the State moved to dismiss and read in the bail jumping charge for sentencing purposes. The State agreed to recommend a prison sentence for the theft conviction without specifying a recommended term of imprisonment, and the parties' agreement also permitted the State to seek restitution.

At sentencing, Bieniek faced maximum penalties of a \$25,000 fine and ten years of imprisonment. *See* WIS. STAT. §§ 943.20(1)(a), (3)(e), 939.50(3)(g). The circuit court imposed an evenly bifurcated eight-year term of imprisonment and found Bieniek eligible to participate in

² The plea agreement did not address the Racine County charge, and that matter is not before us.

the Wisconsin substance abuse program after serving three years of his sentence. The circuit court set restitution at zero and awarded Bieniek 202 days of sentence credit.

Bieniek filed a postconviction motion seeking an additional day of sentence credit. The circuit court granted the motion.

The no-merit report addresses the potential issues of whether Bieniek entered his no-contest plea knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. We are satisfied that appellate counsel properly analyzed these issues, and we agree with appellate counsel that further pursuit of these issues would lack arguable merit. Additional discussion of these issues is not warranted.

Our independent review of the record does not disclose any other potential issues for appeal. 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 Christopher P. August is relieved of any further representation of Dane A. Bieniek. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals