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

November 26, 2024

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

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

Christopher P. August
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Clifford Eugene Bent 716374
John C. Burke Correctional Inst.
P.O. Box 900
Waupun, WI 53963-0900

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

2024AP621-CRNM State of Wisconsin v. Clifford Eugene Bent (L.C. # 2022CF209)

Before Donald, P.J., Geenen and Colón, 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).

Clifford Eugene Bent appeals from a judgment, entered upon his guilty plea, convicting him of homicide by intoxicated use of a firearm. Appellate counsel, Christopher P. August, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Bent has filed a response to the no-merit report, raising several issues. Upon this court's independent review of the record, as mandated by ***Anders***, and upon our

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

consideration of the no-merit report and Bent's response, we conclude that there are no issues of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The State charged Bent with homicide by intoxicated use of a firearm, contrary to WIS. STAT. § 940.09(1g)(a). According to the criminal complaint, police responded to an apartment where a woman had been shot, and the woman later died from her injuries. A witness who was inside the apartment at the time of the shooting reported hearing a loud bang and looking over to see a man—whom the witness identified as Bent in a photo array—holding a shotgun. After waiving his ***Miranda***[2] rights, Bent told police that he had been drinking prior to the shooting and was "highly intoxicated" at the time of the incident. He stated that he had his shotgun in a duffle bag, he took it out to show it to another individual, that individual reached for the gun, and Bent then "pulled back" and the gun "went off."

Bent subsequently moved to suppress his statements to police, arguing that because of his "intoxicated state" during the interview, his ***Miranda*** waiver was invalid and his statements were involuntary. Following an evidentiary hearing, the circuit court denied Bent's suppression motion.

The case proceeded to a jury trial. Before jury selection was completed, however, the parties reached a plea agreement. In exchange for Bent's guilty plea to the crime charged, the State agreed to recommend five years of initial confinement, with a term of extended supervision to be determined by the court. The defense was free to argue at sentencing. Following a plea

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Bent's guilty plea, finding that it was freely, voluntarily, and intelligently entered. Bent's attorney stipulated that the court could use the facts alleged in the criminal complaint as the factual basis for Bent's plea. The court later sentenced Bent to five years of initial confinement and five years of extended supervision.

The no-merit report addresses three potential issues: (1) whether Bent's guilty plea was knowing, intelligent, and voluntary; (2) whether the circuit court erroneously exercised its sentencing discretion; and (3) whether the court erred by denying Bent's suppression motion. Upon our independent review of the record, we agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of these potential issues to support the no-merit conclusion, and we need not address them further.

In addition to the potential issues addressed in the no-merit report, we note that after Bent's judgment of conviction was entered, Bent wrote to the circuit court asking it to amend the judgment to make him eligible to participate in the Substance Abuse Program, also known as the Earned Release Program or "ERP." In response to Bent's request, a staff attorney employed by the circuit court sent a letter to Bent, noting that Bent had filed a notice of intent to pursue postconviction relief, which had been forwarded to the State Public Defender's Office to determine Bent's eligibility for the appointment of postconviction/appellate counsel. The letter informed Bent that if counsel was appointed to represent him, he should discuss the issue regarding his eligibility for the ERP with counsel, and if counsel was not appointed, he should refile his request at that time. Thereafter, Bent's appointed postconviction/appellate attorney did not file any motion regarding Bent's eligibility for the ERP. However, because Bent was

convicted of violating WIS. STAT. § 940.09(1g)(a), he is statutorily ineligible to participate in the ERP. *See* WIS. STAT. § 302.05(3)(a)1. Consequently, counsel's failure to pursue that relief does not give rise to an arguably meritorious issue for appeal.

Bent raises several additional issues in his response to the no-merit report, none of which have arguable merit. First, Bent states that he "will be sending some evidence of in[e]ffective counsel." He then asserts that he is seeking resentencing "[due] to the fact my lawyer never helped me with my case." Aside from this general statement, Bent provides no support for a claim that his trial attorney was constitutionally ineffective. Bent does not explain what aspects of counsel's performance he believes were deficient, nor does he give any indication as to how counsel's performance prejudiced his defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). In particular, Bent does not cite any alleged deficiencies by his trial attorney that would provide a basis for resentencing. Our independent review of the record reveals no grounds to assert an arguably meritorious claim that Bent's trial attorney was constitutionally ineffective.

Second, Bent asserts that he wrote to the circuit court and asked to represent himself. The appellate record confirms that, on July 18, 2022, Bent sent a letter to the court requesting to waive his right to counsel and represent himself. The parties subsequently appeared in court on August 25, 2022, after Bent filed a speedy trial demand. The transcript of that hearing does not show any discussion of Bent's request to proceed *pro se*.

The parties next appeared in court on September 22, 2022, for the hearing on Bent's suppression motion. During that hearing, the parties and the circuit court discussed various *pro se* documents that Bent had filed, including his request to represent himself. The court informed Bent that, subject to limited exceptions, the court does not read *pro se* filings submitted by

represented litigants "[b]ecause you might include things in there thinking it's going to be helpful to you, and then it's not helpful to you and it actually damages your case." The court continued:

> So what I'm going to ask that you do is that the two of you [i.e., Bent and trial counsel] talk about those things. Okay? If between now and that next court date you want to get back in court for any reason, because you want to get a new lawyer, because you want to represent yourself, for any other reason, you tell [trial counsel] and he'll get a hold of us and we'll get a new date before that next court date. All right?

Bent responded, "Okay. Yes, sir."

Our review of the appellate record shows that, following the suppression hearing, Bent did not renew his request to represent himself at any time before his judgment of conviction was entered. Under these circumstances, Bent forfeited any appellate claim regarding his right to self-representation. *See* ***Bishop v. City of Burlington***, 2001 WI App 154, ¶8, 246 Wis. 2d 879, 631 N.W.2d 656 (explaining that, to avoid forfeiture, "[a] litigant must raise an issue with sufficient prominence such that the [circuit] court understands that it is being called upon to make a ruling").

Third, Bent asserts that he does not have a transcript of his "speedy trial hearing," presumably referring to the hearing that occurred on August 25, 2022. In a letter filed with this court, appellate counsel asserts that his office sent "copies of the court record and transcripts" to Bent on April 5, 2024. In any event, this court has reviewed the transcript of the August 25, 2022 hearing, and that transcript does not show the existence of any arguably meritorious issues for appeal.

Finally, Bent concludes his response to the no-merit report by stating that he "just want[s] to be resentence[d]." Bent does not, however, explain why he believes that he is entitled to resentencing. He does not, for instance, assert that the circuit court relied on inaccurate information when sentencing him, *see, e.g.*, ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1, nor does he identify any other arguably meritorious basis for a resentencing claim. Likewise, during our independent review of the appellate record, this court has not identified any arguably meritorious grounds for filing a postconviction motion for resentencing.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved of further representation of Clifford Eugene Bent 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