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DISTRICT IV

December 12, 2024

To:

Hon. Patricia Baker
Circuit Court Judge
Electronic Notice

Lisa M. Roth
Clerk of Circuit Court
Portage County Courthouse
Electronic Notice

Roberta A. Heckes
Electronic Notice

Jennifer L. Vandermeuse
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David J. Piette 181113
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Oshkosh, WI 54903-3310

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

2023AP1952-CRNM	State of Wisconsin v. David J. Piette (L.C. # 2019CF93)
2023AP1953-CRNM	State of Wisconsin v. David J. Piette (L.C. # 2020CF189)

Before Kloppenburg, P.J., Graham, and Nashold, 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).

Attorney Roberta Heckes, appointed counsel for David Piette, has filed a no-merit report in these consolidated appeals pursuant to WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738 (1967).¹ Counsel provided Piette with a copy of the report, Piette filed multiple responses, and counsel filed a supplemental no-merit report. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

review of the record, the no-merit report, the responses, and the supplemental report, we conclude that there is no arguable merit to any appellate issue.

In Portage County Circuit Court Case No. 2019CF93, the State charged Piette with possession with intent to deliver methamphetamine, greater than 50 grams, as a repeater, and as a party to a crime. *See* WIS. STAT. §§ 961.41(1m)(e)4, 961.48, 939.05. In Portage County Circuit Court Case No. 2020CF189, the State charged Piette with eight counts of felony bail jumping and two counts of conspiracy to commit felony bail jumping. *See* WIS. STAT. §§ 946.49(1)(b), 939.31. During a plea hearing that addressed both cases, Piette pled no contest to the count of possession with intent to deliver methamphetamine in Case No. 2019CF93, and no contest to two counts of felony bail jumping in Case No. 2020CF189. Pursuant to the parties' negotiated plea agreement, all of the other charges in Case No. 2020CF189 were dismissed and read in.

In Case No. 2019CF93, the circuit court sentenced Piette to five years of initial confinement and eight years of extended supervision, with the possibility of early release after six years. The sentence was imposed consecutively to another sentence that Piette was serving in Iowa. In Case No. 2020CF189, the court sentenced Piette to one year of initial confinement and two years of extended supervision on each of the felony bail jumping counts, to run concurrently with each other and to Piette's sentence in CSase No. 2019CF93. The circuit court granted Piette 296 days of sentence credit, upon the parties' stipulation.

The no-merit report addresses whether Piette's pleas were knowing, voluntary, and intelligent, and whether the circuit court ascertained an adequate factual basis for the pleas. Our independent review of the record reveals that the plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS.

STAT. § 971.08 relating to the nature of the charges, Piette’s understanding of the proceedings and the voluntariness of the plea decision, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. The parties stipulated on the record that the court could rely on the criminal complaints as a factual basis for the pleas. The record shows no other ground to withdraw the pleas. We agree with counsel that there is no arguably meritorious basis for challenging the pleas.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. As discussed in the no-merit report, the sentences imposed are within the legal maximum penalty ranges. The standards for the circuit court and this court on discretionary sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. Any argument that the circuit court erroneously exercised its sentencing discretion is without arguable merit on appeal.

In his responses to the no-merit report, Piette argues that he is entitled to additional sentence credit beyond what he was granted by the circuit court. Piette acknowledges that he was entitled to, and was given, 296 days of sentence credit for time he served in Portage County in connection with the charges in these cases. However, Piette asserts that he is also entitled to additional credit in these cases for time he served in Brown County, Outagamie County, and Shawano County in connection with other charges, while subject to a Portage County cash bond. We have reviewed the materials submitted by Piette and by his counsel related to the jail time that Piette served in Brown, Outagamie, and Shawano counties. Under WIS. STAT. § 973.155(1)(a), an “offender shall be given credit toward the service of his or her sentence for

all days spent in custody in connection with the course of conduct for which [the] sentence was imposed.” The time Piette spent in jail in Brown, Outagamie, and Shawano counties was for crimes unrelated to the course of conduct for which he was sentenced in the present cases. Piette’s claim for additional sentence credit is without arguable merit.

Piette also argues that he received ineffective assistance of trial counsel. We agree with appellate counsel’s conclusion in the supplemental no-merit report that any such claim would be without arguable merit. To establish ineffective assistance of counsel, Piette must establish that his trial counsel’s actions constituted deficient performance, and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In reviewing trial counsel’s performance, “every effort is made to avoid determinations of ineffectiveness based on hindsight ... and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within professional norms.” *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). This court’s review of the record discloses no arguably meritorious basis for challenging trial counsel’s performance.

The remainder of Piette’s arguments in his no-merit responses are related to the strength of the evidence against him, or are about other evidence that might have been used in his favor. However, sufficiency of the evidence is an issue that was waived by Piette’s no contest pleas. Therefore, the strength of the evidence is not an issue for further consideration.

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

Therefore,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Roberta Heckes is relieved of further representation of David Piette in these cases 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