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DISTRICT IV

December 19, 2024

To:

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Circuit Court Judge
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Morris E. Brown Jr.
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You are hereby notified that the Court has entered the following opinion and order:

2023AP2417-CRNM State of Wisconsin v. Morris E. Brown, Jr. (L.C. # 2020CF2074)

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

Attorneys Lucas Swank and David Susens, appointed counsel for Morris Brown, Jr., have filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). The no-merit report addresses whether there would be any arguable merit to challenging Brown's guilty pleas, the sentences imposed, or the circuit court's denial of

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

Brown's suppression motion. Brown was sent a copy of the report and informed of his right to respond. Brown has not filed a response. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record and the no-merit report, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Brown was charged with disorderly conduct with use of a dangerous weapon, theft of moveable property (domestic animal), and possession of a firearm by a felon. Pursuant to a negotiated plea agreement, Brown pled guilty to the disorderly conduct and felon-in-possession counts, and the remaining count was dismissed. On the disorderly conduct count, the circuit court placed Brown on probation for two years with six months of conditional jail time. On the felon-in-possession count, the court placed Brown on probation for three years. Both probation terms were imposed to run concurrently with Brown's probation in another case.

We first address whether there would be any arguable merit to challenging the circuit court's denial, after an evidentiary hearing, of Brown's motion to suppress evidence found during a search of his vehicle. Brown argued in the motion that the search of his vehicle was not a lawful search conducted incident to arrest. "Warrantless searches are presumed to be unconstitutional." ***State v. Moore***, 2023 WI 50, ¶7, 408 Wis. 2d 16, 991 N.W.2d 412 (internal citation and quotation omitted). There are exceptions, however, and one such exception is a search incident to arrest. ***Id.***, ¶¶7-8. Law enforcement can search a defendant incident to arrest if "a reasonable police officer" would "believe that the defendant probably committed or was committing a crime." ***Id.***, ¶8. "Probable cause is an objective test that 'requires an examination of the totality of the circumstances.'" ***Id.*** (quoting ***State v. Weber***, 2016 WI 96, ¶20, 372 Wis. 2d 202, 887 N.W.2d 554). In addition, the United States Supreme Court has ruled that

"circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" ***Arizona v. Gant***, 556 U.S. 332, 343 (2009) (quoted source omitted).

Here, the Department of Corrections had issued a warrant for Brown after police were called regarding an incident on July 29, 2020. On that date, Brown was reported to have pulled a gun on a person at a park related to a dispute over pit bull puppies that Brown had allegedly stolen. Brown had a prior felony conviction and was on probation at the time. Brown was reportedly observed leaving the park in a tan Chevrolet Tahoe sport utility vehicle (SUV).

On August 14, 2020, a police officer observed Brown pull into a gas station, driving a tan Chevrolet Tahoe SUV. Multiple officers were dispatched to the gas station. Sergeant Thomas Finnegan testified at the suppression motion hearing that he located and identified Brown in the gas pump area of the station, and that he arrested him based on the active warrant. Another officer conducted a search of Brown's person incident to the arrest. Brown testified that, during the search of his person, the officer detected something pointy in his pocket, and Brown admitted to the officer that he had a "little nug of weed" on him. Another officer on the scene, Bart O'Shea, detected an odor of marijuana emanating from Brown's vehicle. O'Shea testified that he conducted a search of the Chevrolet Tahoe SUV. The search of the vehicle resulted in the discovery of two handguns, bullets, and documents with Brown's name on them. Two puppies were also found inside the vehicle.

We agree with the conclusion of counsel in the no-merit report that there would be no arguable merit to challenging the circuit court's denial of Brown's motion to suppress evidence obtained from the search of his vehicle. Suspected marijuana was found in Brown's pocket during a search of his person incident to his arrest for the gun offenses and the theft of puppies.

Brown admitted that the substance was "weed," and there was no impeachment of the police testimony regarding the smell of marijuana coming from his vehicle. Police knew that Brown had a felony conviction, was on probation, and that there was a warrant for his arrest. Additionally, police had reason to believe that Brown may be in possession of a handgun, based upon the report that he had pulled a gun on an individual at a park approximately two weeks earlier. One of the law enforcement officers who was present at the gas station testified that he observed from outside the vehicle that there were dogs inside the vehicle. This testimony was corroborated by Brown's own testimony at the suppression motion hearing that there had been two pit bull puppies in the vehicle. Under these circumstances, we conclude that it was reasonable for police to believe that they would find in the vehicle evidence relevant to the offenses for which Brown was being arrested (*e.g.*, stolen puppies), such that the search of Brown's vehicle was justified under ***Gant***, 556 U.S. at 343. Any challenge to the circuit court's suppression ruling would be without arguable merit.

The no-merit report next addresses whether Brown's plea was knowing, voluntary, and intelligent, and whether the circuit court ascertained an adequate factual basis for the plea. 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 charge, Brown's understanding of the proceedings and the voluntariness of the plea decision, the penalty ranges and other direct consequences of the plea, and the constitutional rights being waived. The parties stipulated that the court could rely on the complaint as a factual basis for the plea. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. As correctly described in the report, the sentence imposed is within the legal maximum. 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.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorneys Lucas Swank and David Susens are relieved of further representation of Brown in this case 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