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DISTRICT II

February 26, 2025

To:

Hon. Andrew J. Christenson
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Robert L. Harris #606142
Prairie Du Chien Correctional Inst.
P.O. Box 269
Prairie du Chien, WI 53821

Christopher P. August
Electronic Notice

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

2024AP661-CRNM State of Wisconsin v. Robert L. Harris (L.C. #2020CF734)

Before Gundrum, P.J., Grogan and Lazar, 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).

Robert L. Harris appeals a judgment of conviction for first-degree reckless homicide by delivery of a controlled substance, contrary to WIS. STAT. § 940.02(2)(a) (2023-24).¹ Appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Harris has responded, and counsel has filed a supplemental letter as well as the autopsy report referenced in Harris's response. See WIS. STAT.

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

RULE 809.32(1)(f). Upon consideration of the no-merit report, the response and the supplemental filings, and following an independent review of the Record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Harris was charged in a three-count complaint following a mixed-drug overdose death in which he was alleged to have provided fentanyl to the victim. Harris was found eligible for State Public Defender (SPD)-appointed counsel, but the circuit court appointed defense counsel at county expense for Harris shortly after he was charged. Counsel obtained an order permitting defense counsel to retain an expert before the matter was resolved by plea.

Pursuant to a plea agreement with the State, Harris pled no contest to the first-degree reckless homicide charge. The remaining counts were dismissed and read in, the parties agreed to a presentence investigation report, and the State agreed to recommend no more than seven-and-one-half years' initial confinement. Following a thorough colloquy, the circuit court accepted Harris's plea and set the matter for sentencing.

At sentencing, the prosecutor recommended a sentence consisting of seven-and-one-half years' initial confinement and ten years' extended supervision. The defense recommended three years' initial confinement and a "lengthy period of supervision." In its sentencing remarks, the circuit court acknowledged Harris's drug addiction issues, the seriousness of the crime, Harris's acceptance of responsibility, Harris's character and prior convictions, and the fact that Harris had not engaged in a commercial transaction but rather was sharing drugs with a friend.

The circuit court ultimately imposed a sentence consisting of seven years' initial confinement and eight years' extended supervision. The parties stipulated to sentence credit and

the court found Harris ineligible for prison programming based on the nature of the offense. The conditions of extended supervision included a requirement that Harris pay attorney fees, and the court held further proceedings on restitution.

Following an evidentiary hearing, the circuit court concluded Harris was required to pay \$5,902.54 in restitution for funeral expenses, and the judgment of conviction was so amended. It was amended again following postconviction proceedings in which Harris successfully challenged the requirement that he reimburse the county for his appointed attorney.² This appeal follows.

The no-merit report addresses whether there would be any non-frivolous basis to challenge the validity of Harris's plea, the sufficiency of the plea colloquy, and the circuit court's exercise of sentencing discretion. Our review of the appellate Record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit.

Harris's response generically asserts that evidence was overlooked, that unspecified false statements led to his conviction, that the circuit court failed to consider mitigating factors, and that Harris was sentenced based on unidentified inaccurate information. He suggests that mixed-drug toxicity was not the "true cause" of the victim's death, and he encourages this court to "take a close look" at the autopsy report.

² The amount Harris owed for his court-appointed attorney was reduced from over \$13,000 to \$480, which was the amount the circuit court found that Harris would have been responsible for by rule had he been provided with SPD-appointed counsel.

In a merits appeal, Harris would be precluded from raising what he perceives to be flaws in the evidence against him. It is well-established that a no-contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Racine County v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). Additionally, Harris's contention that the circuit court failed to adequately consider mitigating factors is belied by the sentencing transcript, wherein the court highlighted many of the mitigating circumstances. Nothing in this court's review of the appellate Record suggests a basis for a non-frivolous challenge to the accuracy of the information the court relied on at sentencing, nor does the autopsy report support a conclusion that the victim died of anything other than mixed-drug toxicity. Our review of the appellate Record discloses no other potentially meritorious issues for appeal.

Based on the foregoing

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved from further representing Robert L. Harris in this appeal. *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