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DISTRICT IV

March 6, 2025

To:

Hon. Barbara W. McCrory
Circuit Court Judge
Electronic Notice

Amanda Nelson
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Marcella De Peters
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Christopher Leon Brown Jr. 531582
Drug Abuse Correctional Center
P.O. Box 190
Winnebago, WI 54985-0190

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

2023AP390-CRNM State v. Christopher Leon Brown, Jr. (L.C. # 2017CF1859)

Before Graham, Nashold, and Taylor, 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 Marcella De Peters, appointed counsel for Christopher Leon Brown, Jr., has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Brown was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

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

The criminal complaint in this matter alleges that officers were dispatched to Brown's residence to assist with a probation search initiated by Department of Corrections (DOC) agents.² Based on information received from an informant, Brown's probation agent had reason to believe Brown was selling heroin. Inside the residence, law enforcement found what appeared to be crack cocaine, marijuana, narcotics, a digital scale, a marijuana pipe, three cell phones, heroin, more than \$600 cash in the pocket of a pair of men's blue jeans, and other items. The State subsequently charged Brown with the following crimes: (1) possession with intent to deliver cocaine, five to fifteen grams, second or subsequent offense and as party to a crime; (2) possession with intent to deliver heroin, less than three grams, second or subsequent offense and as party to a crime; (3) possession with intent to deliver narcotics, second or subsequent offense and as party to a crime; (4) possession with intent to deliver tetrahydrocannabinols (THC), less than 200 grams, second or subsequent offense and as party to a crime; (5) maintaining a drug trafficking place, second or subsequent offense and as party to a crime; (6) possession of drug paraphernalia as party to a crime; (7) child neglect; and (8) felony bail jumping. The State later filed an information amending Count 2 to possession with intent to deliver narcotics (fentanyl), second or subsequent offense and as party to a crime.

Brown filed a motion to suppress the evidence that was obtained, arguing that his constitutional rights were violated. During the suppression hearing, the circuit court heard testimony from the probation officer who was responsible for supervising Brown while he was

² The record indicates that at the time of the search, Brown was on extended supervision. WISCONSIN ADMIN. CODE § DOC 328.22(1) (Nov. 2024) authorizes the DOC to conduct "[a] search of an offender, the offender's living quarters or property, or seizure of the offender's body contents ... at any time, but only in accordance with this section." All references to WIS. ADMIN. CODE ch. DOC 328 are to the November 2024 register unless otherwise indicated.

on extended supervision. The agent testified regarding the information she had, which led to the search of Brown's residence. The circuit court allowed the parties to provide supplemental briefs before denying the motion.

Pursuant to a plea agreement, Brown pled guilty to Counts 1 and 2, as amended. The remaining counts were dismissed and read in. The circuit court accepted Brown's pleas, entered a judgment of conviction, and ordered him to serve concurrent sentences of four years of initial confinement and two years of extended supervision.

The no-merit report first addresses whether there would be any arguable merit to challenging the circuit court's denial of Brown's motion to suppress, which hinged on whether Brown's probation agent had "reasonable grounds" to believe that Brown possessed contraband or evidence of a rule violation on or within his person or property.³ See WIS. ADMIN. CODE § DOC 328.22(2); see also *State v. Hajicek*, 2001 WI 3, ¶37, 240 Wis. 2d 349, 620 N.W.2d 781. Whether a search is reasonable is a question of constitutional fact, and it is reviewed independently of the circuit court. *State v. Jones*, 2008 WI App 154, ¶17, 314 Wis. 2d 408, 762 N.W.2d 106. However, the circuit court's findings of evidentiary fact "will not be upset on appeal unless they are clearly erroneous." *Id.* Having reviewed the facts found by the circuit court, we are satisfied that Brown's probation agent had reasonable grounds to justify the search. Therefore, there would be no arguable merit to a claim that the circuit court erred in denying the motion to suppress.

³ As a rule, a defendant who enters a knowing, intelligent, and voluntary guilty plea gives up all nonjurisdictional challenges to the conviction. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. An exception to this rule is codified in WIS. STAT. § 971.31(10), which permits a defendant who has pled guilty to challenge an order denying a motion to suppress evidence.

Next, the no-merit report addresses whether Brown's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charges, the rights Brown was waiving, and other matters. The record shows no other ground to withdraw the pleas. There is no arguable merit to this issue.

The no-merit report discusses Brown's sentences. As explained in the no-merit report, the sentences are within the legal maximums. As to discretionary issues, the standards for the circuit court and this court 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. There is no arguable merit to this issue.

In addition, the no-merit report analyzes the circuit court's denial of Brown's request for a new attorney late in the proceedings⁴ and whether there is arguable merit to a claim that Brown is entitled to additional sentence credit. This court is satisfied that the no-merit report properly concludes these issues are meritless.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved of any further representation of Christopher Leon Brown, Jr., in this matter. *See* WIS. STAT. RULE 809.32(3).

⁴ Brown had multiple attorneys throughout the course of the proceedings.

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

Samuel A. Christensen
Clerk of Court of Appeals