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 III

March 11, 2025

To:

Hon. Jane M. Sequin
Circuit Court Judge
Electronic Notice

Caroline Brazeau
Clerk of Circuit Court
Marinette County Courthouse
Electronic Notice

Thomas Brady Aquino
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Trinity N. Steinhoff 632321
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2024AP1259-CRNM State of Wisconsin v. Trinity N. Steinhoff (L. C. No. 2022CF141)

Before Stark, P.J., Hruz and Gill, 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).

Trinity N. Steinhoff appeals a judgment of conviction for one count of possession of methamphetamine with intent to deliver (more than ten but not more than fifty grams), as a second and subsequent offense and as a repeater. Steinhoff also appeals an order denying his postconviction motion for sentence modification. Attorney Thomas Brady Aquino has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32

(2023-24).[1] Steinhoff has filed a response to the no-merit report, raising numerous issues. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction and the postconviction order denying Steinhoff's motion for sentence modification. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, the City of Marinette Police Department received information from the Marinette County Sheriff's Office that Steinhoff and his girlfriend, Briana White, had been selling methamphetamine from a "white colored Chevrolet HHR vehicle" that was registered to White's mother. A Marinette police officer located the vehicle and "observed a female driving that [he] believed to be" White, whom he knew from past law enforcement contacts. The officer was aware that White's driver's license was suspended, and he initiated a traffic stop. Steinhoff was a passenger in the vehicle at the time of the stop.

While an officer was preparing a citation for White for operating a motor vehicle with a suspended license, a K9 officer arrived on the scene, and the dog alerted to the presence of narcotics in the vehicle. The officers then removed White and Steinhoff from the vehicle. During a subsequent search of Steinhoff's person, an officer found approximately $1,300 in cash in Steinhoff's back pocket. Officers then searched the vehicle and found a scale in the back seat with white, powdery residue on it, along with "a large quantity of clear plastic baggies."

After completing their search of the vehicle, the officers attempted to perform a more thorough search of Steinhoff's person. When an officer tried to search Steinhoff's waist band,

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

Steinhoff attempted to pull away and grabbed the officer's hand. Steinhoff was then placed in the back of a squad car. In the meantime, an officer field-tested the residue on the scale, but the test result was inconclusive. Thereafter, a second officer field-tested the residue and "received a positive test result for the presence of methamphetamine."

Steinhoff was then transported to jail. On the way, Steinhoff furtively consumed a large amount of methamphetamine that he had concealed on his person, which required him to be taken to the hospital and admitted to the intensive care unit. Officers subsequently found a baggie containing approximately 42.5 grams of methamphetamine between the seat cushions in the back seat of the squad car that had been used to transport Steinhoff.

Based on these allegations, the State charged Steinhoff with three counts, each as a repeater: Count 1, possession of methamphetamine with intent to deliver (more than ten but not more than fifty grams), as a second and subsequent offense; Count 2, felony bail jumping; and Count 3, possession of drug paraphernalia. The parties ultimately reached a plea agreement, pursuant to which Steinhoff would plead no contest to Count 1, and the remaining counts would be dismissed and read in, along with two additional charges in another case. The plea agreement also provided that the State would cap its sentence recommendation at three years' initial confinement followed by five years' extended supervision, consecutive to any other sentence.

Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Steinhoff's no-contest plea to Count 1, finding that it was freely, voluntarily, and intelligently made. Steinhoff's attorney agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for Steinhoff's plea, and the court found that an adequate factual basis existed.

The circuit court ordered a presentence investigation report (PSI), and the defense submitted an alternative PSI. At sentencing, consistent with the plea agreement, the State recommended three years' initial confinement followed by five years' extended supervision, consecutive to any other sentence. The defense recommended three years' initial confinement followed by five years' extended supervision, concurrent to a revocation sentence imposed in another case. The court followed the State's recommendation. The court made Steinhoff eligible for the Challenge Incarceration and Substance Abuse Programs after serving twenty-four months of his sentence.

Steinhoff filed a postconviction motion for sentence modification. He argued that "the parties and the [circuit] court were aware [at sentencing] that Steinhoff would be serving a 'revocation' sentence as a result of being revoked from probation and/or extended supervision in earlier cases," but "at no point did the parties or the court acknowledge the length of the revocation sentence." Steinhoff therefore argued that the length of the revocation sentence—i.e., thirty months—was a new factor warranting sentence modification because it would have provided a reason for the court "to issue less than the 36 months of initial confinement ordered by the court, and/or to deem Steinhoff eligible for" the Challenge Incarceration and Substance Abuse Programs "upon the commencement of his sentence rather than after serving 24 out of the 36 months of initial confinement."

The circuit court denied Steinhoff's postconviction motion without a hearing. The court concluded that Steinhoff had failed to show the existence of a new factor because defense counsel had "informed the [c]ourt of the general term of the revocation" at sentencing.

The no-merit report addresses three issues: (1) whether Steinhoff entered his no-contest plea knowingly, intelligently, and voluntarily; (2) whether the circuit court erroneously exercised its sentencing discretion; and (3) whether the court erred by denying Steinhoff's postconviction motion for sentence modification. Upon our independent review of the record, we agree with appellate counsel's description, analysis, and conclusion that these potential issues lack arguable merit.[2] We therefore do not address these issues further, aside from addressing the specific arguments raised in Steinhoff's response to the no-merit report.

In his response, Steinhoff argues that the circuit court's plea colloquy was defective because the court "failed to address [his] constitutional rights." The record shows, however, that during the plea colloquy, the court addressed Steinhoff's constitutional rights by confirming that Steinhoff had reviewed the rights listed on the plea questionnaire with his attorney and understood that he was waiving those rights by entering his plea. This discussion adequately fulfilled the court's duty to ensure that Steinhoff understood the constitutional rights that he was waiving. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987).

[2] We note the existence of one potential issue that the no-merit report does not address. After Steinhoff's sentencing, this court held in ***State v. Hailes***, 2023 WI App 29, ¶¶1-2, 408 Wis. 2d 465, 992 N.W.2d 835, *review denied*, 2024 WI 4, 5 N.W.3d 597, that the repeater enhancer and the second or subsequent offense enhancer cannot both apply when calculating a defendant's maximum term of imprisonment. However, the sentence that the circuit court imposed in this case—i.e., three years' initial confinement followed by five years' extended supervision, consecutive to any other sentence—was far less than the base maximum sentence for Steinhoff's crime without the application of either penalty enhancer—i.e., twenty-five years' imprisonment, *see* WIS. STAT. §§ 939.50(3)(d), 961.41(1m)(e)3. Moreover, there would be no arguable merit to a claim that Steinhoff's attorney was constitutionally ineffective by failing to challenge the application of both penalty enhancers because controlling legal authority at the time of Steinhoff's plea and sentencing permitted the application of both enhancers. *See* ***Hailes***, 408 Wis. 2d 465, ¶49.

Steinhoff also asserts that the circuit court "failed to ask … if [he] was receiving any treatment for a mental health illness or disorder" during the plea colloquy. Steinhoff claims that he was "receiving treatment for a sleeping disorder" and was taking medication for that condition at the time he entered his plea. However, on the plea questionnaire, Steinhoff expressly stated that he was not receiving treatment for a mental illness or disorder and had not taken any medication within the last twenty-four hours. During the plea colloquy, the court confirmed that Steinhoff had not taken any medication during the last twenty-four hours and that nothing was "interfering with [Steinhoff] being able to think clearly today or make a decision" about entering a plea. The court also confirmed that Steinhoff was twenty-three years old, had completed nine years of school, and could read, write, and understand English. On this record, there would be no arguable merit to a claim for plea withdrawal based on the court's failure to "[d]etermine the extent of [Steinhoff's] education and general comprehension so as to assess [Steinhoff's] capacity to understand the issues at the [plea] hearing." *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

Steinhoff's response to the no-merit report also alleges that his trial attorney was constitutionally ineffective in various respects. A defendant may establish manifest injustice, as required to withdraw a no-contest plea after sentencing, by showing that he or she received ineffective assistance of counsel. *See* ***State v. Dillard***, 2014 WI 123, ¶84, 358 Wis. 2d 543, 859 N.W.2d 44. To show that he or she received ineffective assistance, a defendant "must prove (1) that trial counsel's performance was deficient; and (2) that this deficiency prejudiced the defendant." ***Id.***, ¶85.

Steinhoff first claims that his trial attorney was ineffective by failing to "challenge discovery" because the State "failed to provide the dispatch report, witness list, and provide

photographs of the substance on [the] weighing device," which could have supported "a lesser charge of possession, not possession with intent" to deliver. "A defendant has a due process right to any favorable evidence 'material either to guilt or to punishment' that is in the State's possession, including any evidence which may impeach one of the State's witnesses." ***State v. Wayerski***, 2019 WI 11, ¶35, 385 Wis. 2d 344, 922 N.W.2d 468 (citation omitted). To establish a due process violation based on the State's failure to produce such evidence, a defendant must show that: (1) the evidence is favorable to the defendant; (2) the State suppressed the evidence; and (3) the evidence is material. ***Id.***

Here, Steinhoff does not explain what the "dispatch report" and "witness list" would have shown. In addition, he does not explain how any photographs of the methamphetamine being weighed would have been helpful to his case. For instance, he does not assert that the photographs would have shown that the weight of the methamphetamine was actually less than 42.5 grams. Moreover, Steinhoff ignores the other evidence supporting a charge of possession with intent to deliver, namely: (1) the scale and baggies found in the back seat of White's vehicle; and (2) the large amount of cash found on Steinhoff's person. In essence, Steinhoff provides no arguable basis to conclude that the dispatch report, witness list, and photographs would have been either favorable to his defense or material. On this record, Steinhoff has not shown the existence of an arguably meritorious claim that his trial attorney was constitutionally ineffective by failing to challenge the State's alleged failure to provide those items.

At another point in his response to the no-merit report, Steinhoff asserts that the State "failed to provide exculpatory evidence to [the] defense of three officer statements." By entering a no-contest plea, Steinhoff forfeited his right to raise this argument directly on appeal. *See* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. To the extent Steinhoff

intends to argue that he should be permitted to withdraw his plea because his trial attorney was constitutionally ineffective by failing to challenge the State's failure to provide three officers' statements, that claim would lack arguable merit. Steinhoff does not identify which officers' statements the State allegedly failed to provide. In addition, he does not explain why he believes that those statements would have been either favorable to his defense or material. Steinhoff's vague assertion about the State failing to provide three unidentified officers' statements is insufficient to give rise to an arguably meritorious issue for appeal.

Steinhoff also argues that his trial attorney was ineffective by failing "to submit to the court that [Steinhoff] was committed to Bellin Health Psychiatric Center." However, Steinhoff does not explain when he was committed to Bellin Health Psychiatric Center or why his trial attorney should have shared that information with the court. As noted above, Steinhoff expressly stated on the plea questionnaire that he was not receiving treatment for a mental illness or disorder, and he affirmed during the plea colloquy that he had not taken any medication during the prior twenty-four hours and that nothing was interfering with his ability to think clearly. Under these circumstances, Steinhoff's assertion that he was committed for psychiatric care at some unspecified point in time is insufficient to support an arguably meritorious claim that his trial attorney was constitutionally ineffective in connection with the entry of his no-contest plea.[3]

[3] Elsewhere in his response to the no-merit report, Steinhoff asserts that his trial attorney "did not properly go through the preliminary examination questionnaire and waiver as medical/mental health records show[] [Steinhoff] was committed to Bellin Health Psychiatric Center." To the extent Steinhoff means to argue that he did not validly waive his preliminary examination, we note that Steinhoff forfeited that argument by entering a no-contest plea. *See* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Steinhoff next asserts that his trial attorney was ineffective by failing to "challenge the positive [test] result from [the] scale as [the] officers tested it twice." Beyond vaguely asserting that this evidence was "tainted," Steinhoff provides no reason to believe that his trial counsel was ineffective by failing to file a suppression motion on the grounds that the scale was tested twice. Moreover, we note that the charge of possession with intent to deliver methamphetamine was based on the substance found in the squad car, not on the residue found on the scale. As such, we see no arguable merit to a claim that Steinhoff was prejudiced by his trial attorney's failure to challenge the positive test result from that residue.

Steinhoff also claims that his trial attorney was ineffective by failing to "investigate who the Menominee County [s]ource is so [the] defense [could] properly investigate" that individual's reliability. The criminal complaint recounts that the day before Steinhoff's arrest in the instant case, a detective from the Marinette County Sheriff's Office was assisting the Menominee County Drug Unit with a controlled purchase of methamphetamine involving White and Steinhoff, and "Menominee Count[y's] [s]ource" identified White as the driver of the vehicle involved in the sale. Marinette County shared this information with the City of Marinette Police Department, and a police officer from that department subsequently stopped White's vehicle, ultimately leading to the charges against Steinhoff in this case.

Steinhoff's claim that his trial attorney was ineffective by failing to investigate the "Menominee County [s]ource" lacks arguable merit. The criminal complaint established a factual basis for the charge to which Steinhoff pled without any information provided by the Menominee County source. To the extent Steinhoff means to argue that his trial attorney should have filed a suppression motion on the basis that the information from the Menominee County source was not sufficiently reliable—and therefore did not provide reasonable suspicion for the

police to stop White's vehicle—we note that the police had reasonable suspicion to stop the vehicle even absent any information from the Menominee County source. Specifically, reasonable suspicion existed for the stop based on: (1) the officer's knowledge that White's driver's license was suspended; and (2) the officer's observation of a woman whom he believed to be White driving the vehicle. *See* ***State v. Popke***, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569 ("[A] police officer may … conduct a traffic stop when, under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed.").

Steinhoff also asserts that his trial attorney was ineffective by failing "to exclude evidence" of an uncharged Michigan crime. Steinhoff, however, does not identify which uncharged crime he believes his trial attorney should have sought to exclude, nor does he identify any legal basis for doing so. The criminal complaint provided a factual basis for the charge to which Steinhoff pled without any information about an uncharged Michigan crime. Furthermore, we see nothing in the sentencing transcript to suggest that the circuit court relied on an uncharged Michigan crime when imposing Steinhoff's sentence. Under these circumstances, there are no arguable grounds to claim that Steinhoff's trial attorney was ineffective by failing to exclude evidence of an uncharged Michigan crime.

Next, Steinhoff asserts that his trial attorney was ineffective by failing to "educate" him regarding "the motions [the] defense could [have] filed." Steinhoff does not explain, however, which motions he would have filed had his trial counsel so educated him. Nor does he allege that, had trial counsel educated him about specific motions, he would have chosen to pursue those motions rather than entering a no-contest plea. Upon our independent review of the record, we can perceive no arguable basis for counsel to have filed either a suppression motion or a

motion to dismiss the charges against Steinhoff. Under these circumstances, Steinhoff's vague assertion that his trial counsel should have educated him about potential motions does not give rise to an arguably meritorious claim for ineffective assistance of trial counsel.

Steinhoff also asserts that the officers "used unnecessary force" when searching him. To the extent Steinhoff means to argue that his trial attorney should have filed a motion to suppress evidence based on the officers' alleged use of unnecessary force, that claim lacks arguable merit. Suppression of evidence is not the appropriate remedy for a claim that officers used unreasonable force during a search. *See* ***State v. Herr***, 2013 WI App 37, ¶¶7-11, 346 Wis. 2d 603, 828 N.W.2d 896.

In addition to the above arguments challenging the validity of his no-contest plea, Steinhoff also challenges his sentence on several grounds. First, Steinhoff argues that he was sentenced based on inaccurate information because the prosecutor stated at sentencing that he had been placed at Lincoln Hills School "multiple times" "because he couldn't comply with the rules set in the juvenile supervision." Steinhoff contends that he was actually sent to Lincoln Hills only once after being convicted of an offense as an adult while he was still a juvenile. Relatedly, Steinhoff asserts that his trial attorney was ineffective by failing to correct an inaccurate statement in the alternative PSI that he had been placed at Lincoln Hills "several times" as a juvenile "for failing to comply with the rules."

To obtain resentencing based on a sentencing court's use of inaccurate information, a defendant must show both that the information was inaccurate and that the court actually relied on the inaccurate information when imposing sentence. ***State v. Tiepelman***, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. Inaccurate information refers to information that is

"extensively and materially false." *See* ***State v. Travis***, 2013 WI 38, ¶18, 347 Wis. 2d 142, 832 N.W.2d 491. Actual reliance depends upon whether the sentencing court gave "explicit attention" or "specific consideration" to the inaccurate information, "so that the misinformation 'formed part of the basis for the sentence.'" ***Tiepelman***, 291 Wis. 2d 179, ¶14 (citation omitted).

Assuming without deciding that the information about Steinhoff being placed at Lincoln Hills multiple times was inaccurate, there is no support for a conclusion that the circuit court actually relied on that inaccurate information when sentencing Steinhoff. During its sentencing remarks, the court noted that Steinhoff had "spent time at Lincoln Hills." However, the court did not reference the number of times that Steinhoff had been placed at Lincoln Hills or the reasons for him being placed there. Thus, the court did not give "explicit attention" or "specific consideration" to the allegedly inaccurate information about Steinhoff's undisputed placement at Lincoln Hills, and that information did not form part of the basis for Steinhoff's sentence. *See* ***id.***

Next, Steinhoff asserts that the author of the Department of Corrections' PSI "was [his] [extended supervision] [a]gent" and therefore had a conflict of interest. While "[t]he integrity of the sentencing process demands that the [PSI] be accurate, reliable and above all, objective," ***State v. Thexton***, 2007 WI App 11, ¶4, 298 Wis. 2d 263, 727 N.W.2d 560 (citation omitted), this court has recognized that "the supervising probation agent often conducts the PSI," which does not give rise to a conflict of interest, ***id.***, ¶5. Accordingly, this issue lacks arguable merit.

Finally, Steinhoff asserts that during sentencing, the circuit court relied on inaccurate information from both PSIs about his "probation violations and the dates [he] was revoked." Steinhoff further contends that his trial attorney "failed to correct" these mistakes. Steinhoff

does not explain, however, which information in the PSIs about his probation violations he believes was inaccurate. Without that specificity, Steinhoff's vague assertion that the court relied on inaccurate information about his probation violations is insufficient to support an arguably meritorious claim for resentencing.

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

Therefore,

IT IS ORDERED that the judgment and postconviction order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved of further representation of Trinity N. Steinhoff 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