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

May 13, 2025

To:

Hon. Maureen D. Boyle
Circuit Court Judge
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

Frederick A. Bechtold
Electronic Notice

John Blimling
Electronic Notice

Samuel J. Dobbins 299266
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2023AP1160-CRNM State of Wisconsin v. Samuel J. Dobbins (L.C. No. 2021CF26)

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).

Samuel Dobbins appeals from a judgment convicting him of a second or subsequent offense of possession of three to ten grams of methamphetamine with intent to deliver and from an order denying his postconviction motion. Attorney Frederick A. Bechtold has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24).[1]

The no-merit report sets forth the procedural history of the case and addresses the validity of Dobbins' plea and sentence. Dobbins has filed a response to the no-merit report, alleging that:

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

(1) law enforcement and probation agents unfairly "targeted" him; (2) he was not allowed to fire his trial counsel before entering a plea; (3) he did not understand when entering his plea that the circuit court would be able to exceed the parties' recommendations; (4) there were errors in the presentence investigation report (PSI), and counsel did not review the PSI with Dobbins or convey those alleged errors to the court; (5) the court exhibited bias by rejecting a no-contest plea and imposing an excessive sentence; and (6) a probation agent perjured herself at the postconviction hearing. Bechtold filed a supplemental no-merit report addressing these issues, to which Dobbins filed an additional response.

Having independently reviewed the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744 (1967), in addition to the submissions by Bechtold and Dobbins, we conclude that there are no issues of arguable merit. Accordingly, counsel will be allowed to withdraw, and the judgment and order shall be summarily affirmed.

This case arose out of a controlled drug buy based upon information from a confidential informant. The State charged Dobbins with one count of a second or subsequent offense of possession of methamphetamine with intent to deliver; one count of a second or subsequent offense of delivery of methamphetamine; and one count of felony bail jumping.

The Office of the State Public Defender appointed Attorney Cheryl Gill to represent Dobbins. Gill moved to withdraw at Dobbins' request because Dobbins wanted a different attorney and was making inquiries into retaining private counsel. Dobbins alleged that Gill was not adequately communicating with him and she was pressuring him to take a plea. However, after questioning Dobbins about how he was going to raise the $5,000 to $10,000 needed to retain private counsel, the circuit court denied Gill's withdrawal motion. The court stated that it

would allow a substitution of counsel and continuation of the trial date in the event that Dobbins actually retained a new attorney, but it would not permit Dobbins to proceed without counsel in the meantime. No other attorney ever filed a notice of appearance or request for substitution on Dobbins' behalf.

Dobbins pled no contest to the first count in exchange for having the other two counts in this case and the charges in an additional case dismissed and read in. The State also agreed to recommend an imposed and stayed sentence of eight years' initial confinement followed by four years' extended supervision, subject to a four-year period of probation and six months of conditional jail time. The circuit court rejected the no-contest plea, but it accepted Dobbins' guilty plea after conducting a plea colloquy and reviewing a signed plea questionnaire. During the plea colloquy, the court explicitly asked Dobbins whether he was satisfied with Gill's performance, whether he understood that the court was not bound by the parties' sentencing recommendations, and whether Dobbins knew that the court could impose the maximum sentence of 19 years. Dobbins responded affirmatively to each question.

The circuit court directed that a previously ordered PSI, which was in progress for another case, should also include this case, and it subsequently held a sentencing hearing. The PSI recommended nine to eleven years' initial incarceration followed by three to four years' extended supervision, to be served concurrently with the sentence in another pending case. The parties jointly requested the sentence the State had previously agreed to recommend. The court discussed factors related to the severity of the offense and Dobbins' character, and it explained how they related to the court's sentencing goal of protecting the public. The court stated that it would not place Dobbins on probation because his criminal history and multiple prior revocations from probation gave the court no expectation that Dobbins could successfully

complete probation. The court then sentenced Dobbins to nine years' initial confinement followed by three years' extended supervision.

Dobbins filed a postconviction motion for resentencing, alleging inaccuracies in the PSI and ineffective assistance of counsel for failing to review the PSI with Dobbins prior to sentencing. At the postconviction hearing, Dobbins testified that the PSI writer, Trudy Meister, had inaccurately: (1) quoted Dobbins as stating that he had hit a man with a stick during a carjacking when, in fact, Dobbins said the other man hit him with a stick; (2) construed a statement Dobbins made that, if he were sent back to prison, he would be "right back in the same situation [he] was. It's like throwing a dog into the street, so I did what I had to do to survive," as meaning that he had resorted or would resort to selling methamphetamine to survive, when he just meant that he would live where he needed to live; and (3) construed Dobbins' statements that "I have made bad choices in the past when I didn't have a job and needed money" and that he "supposed" he had been involved in the delivery of controlled substances—as an admission that he had sold methamphetamine to make a living, when in fact he was just using drugs and he "wasn't no big drug dealer or anything." Dobbins further testified that he did not have time to go over the PSI with his attorney because Dobbins was late arriving at the sentencing hearing.

Meister testified that she takes verbatim notes on a worksheet and accompanying notepad when she interviews defendants for a PSI, and she asks a defendant to stop if he or she is talking too fast. Meister verified that her notes, introduced as Exhibit 2, documented that Dobbins made the statements that Meister attributed to Dobbins in the PSI. The circuit court deemed Meister's testimony to be more credible than Dobbins' testimony, and it found that the statements attributed to Dobbins in the PSI were not inaccurate. Based upon that finding, the court further

concluded that Dobbins could not demonstrate prejudice based upon counsel's alleged failure to review the PSI with Dobbins.

Upon reviewing the record, we agree with counsel's description, analysis, and conclusions that the plea colloquy was adequate, that the circuit court properly exercised its sentencing discretion, and that it imposed a valid sentence. We will therefore not discuss those issues further. We will briefly address why the additional issues Dobbins raises in his response to the no-merit report also lack arguable merit.

We first note that Dobbins' plea forfeited the right to raise nonjurisdictional defects and defenses, aside from a double jeopardy exception that does not apply here. *See* ***State v. Kelty***, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886; *see also* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Therefore, Dobbins cannot raise any claims of bias or prosecutorial misconduct arising from his perception that he was "targeted" by law enforcement or probation authorities.

Second, Dobbins mischaracterizes the circuit court's ruling when he asserts that he was not allowed to fire his trial attorney. The court stated that Dobbins *would* be allowed to substitute counsel if he were able to retain counsel. Because Dobbins had not waived his right to counsel or expressed any interest in proceeding pro se, however, the court reasonably refused to allow Dobbins' appointed trial counsel to withdraw before successor counsel was in place.

Third, the record conclusively refutes Dobbins' assertion that he did not understand that the circuit court would be able to exceed the parties' sentence recommendations.

Fourth, the circuit court's determination that the information in the PSI was not inaccurate was based upon a credibility determination. Because the circuit court is in the best position to observe witness demeanor and gauge the persuasiveness of testimony, it is the "ultimate arbiter" for credibility determinations when acting as a factfinder, and we will defer to its resolution of discrepancies or disputes in the testimony and its determinations of what weight to give to particular testimony. ***Johnson v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980); *see also* WIS. STAT. § 805.17(2) ("[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of witnesses."). Thus, Dobbins has no arguably meritorious basis to claim on appeal that the probation agent perjured herself at the postconviction hearing, that Dobbins was sentenced based upon inaccurate information, or that his trial counsel provided ineffective assistance by failing to review the PSI with Dobbins prior to sentencing.

Finally, the record does not support Dobbins' assertion that the circuit court judge was biased against him or that the sentence imposed was excessive. In analyzing a claim of judicial bias, we begin with the presumption that a judge is fair, impartial, and capable of ignoring any biasing influences. ***State v. Gudgeon***, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. To overcome that presumption, a party must demonstrate the objective[2] existence of "actual bias" (i.e., that the judge in fact treated the party unfairly), or the "appearance of bias" (i.e., that there are circumstances present under which "a reasonable person—taking into consideration human psychological tendencies and weaknesses—[would conclude] that the average judge could not be trusted to "hold the balance nice, clear and true"). ***Id.***, ¶¶20-24. Opinions formed

[2] Although a judge may also be subjectively biased, that is a determination that can only be made by the judge him or herself. ***State v. McBride***, 187 Wis. 2d 409, 414-15, 523 N.W.2d 106 (Ct. App. 1994).

by a judge based upon facts introduced or events occurring during the course of a current or prior proceeding involving a party do not constitute the basis for a bias or partiality motion unless they display "a deep-seated favoritism or antagonism that would make fair judgment impossible." ***State v. Rodriguez***, 2006 WI App 163, ¶36, 295 Wis. 2d 801, 722 N.W.2d 136; *see also* ***Liteky v. United States***, 510 U.S. 540, 555 (1994) (judicial rulings alone almost never constitute a valid basis for a partiality motion).

The circuit court judge's general preference for guilty pleas rather than no-contest pleas does not demonstrate any personal antagonism toward Dobbins. A court has discretion to accept or reject a no-contest plea. WIS. STAT. § 971.06(1)(c) (a defendant may plead no contest "subject to the approval of the court"); ***State ex rel. Warren v. Schwarz***, 219 Wis. 2d 615, 651 n.21, 579 N.W.2d 698 (1998) (circuit courts have discretion whether to accept no-contest and Alford pleas).

A sentence may be considered unduly harsh or unconscionable only when it is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh. ***Id.***, ¶¶31-32. The sentence imposed here consisted of one additional year of initial confinement and one less year of extended supervision than the imposed and stayed sentence Dobbins and the State jointly requested, and it was on the shorter side of the recommendation made in the PSI. The sentence does not shock the conscience given Dobbins' extensive criminal history, the read-in offenses, and the circuit court's comments about the amount of damage methamphetamine does to the community.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders***. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Frederick A. Bechtold is relieved of any further representation of Samuel Dobbins in this matter 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