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DISTRICT I

May 13, 2025

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Arthur G. Smith, Jr. 689860
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You are hereby notified that the Court has entered the following opinion and order:

2022AP932-CRNM State of Wisconsin v. Arthur G. Smith, Jr. (L.C. # 2018CF2765)

Before Geenen, Colón, 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).

Arthur G. Smith, Jr., appeals from a judgment convicting him of one count of conspiring to manufacture/deliver heroin (more than fifty grams). Appellate counsel, Angela Conrad Kachelski, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24), and ***Anders v. California***, 386 U.S. 738 (1967).[1] Smith filed a response and counsel filed a supplemental no-merit report. Upon consideration of the parties' filings and an independent review of the record, as mandated by ***Anders***, we conclude that the judgment may be summarily affirmed because

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

there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State charged Smith in an 80-page criminal complaint naming more than 20 defendants. The complaint detailed a lengthy investigation into Smith's co-defendant Chauncey Griffin and his drug trafficking organization. According to the complaint, Smith supplied heroin to Griffin.

Smith filed a motion to suppress the statement he made to police. Following a hearing, the circuit court denied the suppression motion. Smith also sought to suppress the evidence found during a search of his storage locker in Cook County, Illinois. The court denied that motion as well.

Smith proceeded to a jury trial. However, on the sixth day of trial, he entered a guilty plea to the count as charged. The circuit court sentenced Smith to 12 years of initial incarceration followed by 10 years of extended supervision. The court made him eligible for the Earned Release Program after serving 9 years. This no-merit appeal follows.

The no-merit report first analyzes whether the circuit court properly denied Smith's suppression motions.[2] Smith contested the voluntariness of his statement to police. *See* ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965). During the hearing, Smith's trial counsel argued that Smith was under the influence of drugs or alcohol at the time he made

[2] 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.

his statement to police, which was more than 24 hours after his arrest. Trial counsel additionally claimed Smith was in a generalized "state of shock" and was "potentially shaking … off … a hangover as well." After listening to the recordings of the police interview, the testimony of three detectives called by the State, and Smith's own testimony, the court denied the motion. The court detailed its findings, including its assessment that Smith's testimony that he did not remember anything from the interview was not believable. The court noted that Smith's statement "was very detailed and wide-ranging," and the court did not believe that someone intoxicated or impaired would have been able to provide that type of statement. The court found that Smith's statement was voluntary.

Applying the circuit court's factual findings to the legal standard for voluntariness, we conclude there is no arguable merit to challenge the court's denial of Smith's suppression motions. These findings of fact are not clearly erroneous, and the circuit court appropriately applied the legal standards for suppression. *See* ***State v. Clappes***, 136 Wis. 2d 222, 235-36, 401 N.W.2d 759 (1987) (explaining the rules regarding the admissibility of statements made by a defendant to police officers).

The no-merit report next addresses the circuit court's denial of Smith's suppression motion based on the search of his storage locker in Illinois, which Smith claimed lacked probable cause. "A search warrant may issue only upon probable cause." ***State v. Jones***, 2002 WI App 196, ¶10, 257 Wis. 2d 319, 651 N.W.2d 305. On review of a challenge to probable cause for issuance of a search warrant, we examine "the totality of the circumstances presented to the warrant-issuing commissioner to determine whether the warrant-issuing commissioner had a substantial basis for concluding that there was a fair probability that a search of the specified premises would uncover evidence of wrongdoing." ***State v. Silverstein***, 2017 WI App 64, ¶13,

378 Wis. 2d 42, 902 N.W.2d 550 (citation omitted). Probable cause requires a "practical, common-sense decision" that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." ***Illinois v. Gates***, 462 U.S. 213, 238 (1983).

Here, the circuit court, after reviewing the briefs and the affidavits supporting the warrants, detailed its findings as to the nexus between the alleged drug activity that Smith was involved in and the storage locker. We agree with counsel's analysis that any challenge to the denial of the suppression motion would lack arguable merit.[3]

The no-merit report additionally addresses whether there would be arguable merit to a claim that Smith did not knowingly, voluntarily, and intelligently enter his guilty plea. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking the guilty plea, pursuant to WIS. STAT. § 971.08, ***Bangert***, 131 Wis. 2d at 261-62, and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There would be no arguable merit to a claim on this basis.

Lastly, the no-merit report discusses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court appropriately considered relevant sentencing objectives and factors and imposed a reasonable sentence, which was five

[3] In ruling on the suppression motion, the circuit court additionally analyzed whether Wisconsin or Illinois law controlled and properly determined that Wisconsin law controlled. The court, however, aptly explained that even under Illinois law, the result would be the same.

and one-half years less than the sentence recommended by the State. There would be no arguable merit to a challenge to the court's sentencing discretion.

In his response, Smith raises a host of issues. However, as previously noted, by entering his valid guilty plea, Smith forfeited the right to raise any nonjurisdictional defects or defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

Insofar as Smith claims that the State did not have jurisdiction to charge him and that the criminal complaint was defective, the supplemental no-merit report explains that there was never a timely challenge to the complaint, but even if there was, there is no merit to a claim that the State lacked jurisdiction. The supplemental no-merit report concludes, and we agree, that Smith was either committing a crime in Wisconsin by delivering heroin to Griffin on multiple occasions, or, while outside of the state, in Illinois, was aiding and abetting the sale of heroin in Wisconsin. Both scenarios result in Wisconsin jurisdiction. *See* WIS. STAT. § 939.03 (providing that Wisconsin has jurisdiction over a crime when "[t]he person commits a crime, any of the constituent elements of which takes place in this state[; or w]hile out of this state, the person aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in this state").

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Smith. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit or importance to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Smith further in this appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved of further representation of Arthur G. Smith, Jr., 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