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**DISTRICT IV**

June 5, 2025

To:

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Circuit Court Judge  
Electronic Notice

Jeff Okazaki  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

John Blimling  
Electronic Notice

Jeremy Newman  
Electronic Notice

Andre P. Brown 695124  
Columbia Corr. Institution  
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Portage, WI 53901-0900

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

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2024AP885-CRNM      State of Wisconsin v. Andre P. Brown (L.C. # 2020CF2054)

Before Blanchard, Graham, 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).**

Andre Brown appeals from a judgment convicting him, upon entry of guilty pleas, of first-degree reckless homicide contrary to WIS. STAT. § 940.02(1) (2023-24) and attempted first-degree intentional homicide contrary to WIS. STAT. §§ 939.32 and 940.01(1)(a), both as a party to a crime.<sup>1</sup> See WIS. STAT. § 939.05. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Brown received a copy of the report, was advised of his right to file a response, and has not responded. Upon

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

consideration of the report and an independent review of the record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Brown was charged with first-degree intentional homicide and attempted first-degree homicide, both as a party to a crime. Brown was a passenger in a vehicle from which gunshots were fired at another vehicle. In the other vehicle, an eleven-year-old female passenger was shot in the head and ultimately died from her injuries. Brown was sixteen years old at the time of the incident.

The no-merit report discusses whether the court misused its discretion when it denied Brown's petition for a reverse waiver pursuant to WIS. STAT. § 970.032(2). Reverse waiver is the procedure by which an adult court transfers a case against a juvenile defendant to juvenile court. *See State v. Toliver*, 2014 WI 85, ¶18 n.7, 356 Wis. 2d 642, 851 N.W.2d 251.

Courts of criminal jurisdiction have exclusive jurisdiction over a juvenile who is alleged to have attempted or committed a violation of WIS. STAT. § 940.01 or is alleged to have committed a violation of WIS. STAT. § 940.02 after the juvenile's tenth birthday. *See* WIS. STAT. § 938.183(1)(am). If the circuit court finds probable cause under WIS. STAT. § 970.032(1), the juvenile is entitled to a reverse waiver hearing. *See State v. Kleser*, 2010 WI 88, ¶7, 328 Wis. 2d 42, 786 N.W.2d 144. At the reverse waiver hearing, the criminal court retains jurisdiction unless the juvenile shows all of the following by a preponderance of the evidence: (1) if convicted, the juvenile could not receive adequate treatment in the criminal justice system; (2) transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense; (3) and retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused. *See* § 970.032(2)(a)-(c); *Kleser*, 328 Wis. 2d 42, ¶7.

If the juvenile meets this burden, the decision whether to transfer the juvenile to juvenile court is a matter of circuit court discretion. *See id.*, ¶37.

Our review of the record satisfies us that there would be no arguable merit to challenging the circuit court’s exercise of discretion in denying a reverse waiver. The court considered on the record all three requirements for a reverse waiver under WIS. STAT. § 970.032(2). As to the first requirement, the court found, based on the testimony, that there were treatment programs available within the adult criminal justice system that could be adequate for Brown’s treatment. As to the second requirement, the court found that the crime was likely premeditated and that transferring jurisdiction to juvenile court “would depreciate the seriousness of this offense.” As to the third requirement, the court noted that Brown was on supervision at the time of the offense and concluded, “I can’t say that moving this case into juvenile court is going to do anything other than suggest to people that if you commit this type of crime, then the consequences are going to be less severe.” For these reasons the court denied the petition for a reverse waiver.

Because a juvenile must satisfactorily demonstrate all three requirements of WIS. STAT. § 970.032(2) to be considered for reverse waiver, failure to meet the burden on any one of them requires the circuit court to retain jurisdiction. Here, the court determined that Brown had failed to satisfy all three. We agree with counsel’s conclusion in the no-merit report that there would be no arguable merit to challenging the circuit court’s decision on Brown’s petition for a reverse waiver.<sup>2</sup>

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<sup>2</sup> A decision on reverse waiver ordinarily should be challenged by interlocutory appeal. *See State v. Dominic E.W.*, 218 Wis. 2d 52, 54 n.2, 579 N.W.2d 282 (Ct. App. 1998). A valid guilty plea also waives any challenge to a waiver decision. *See State v. Villegas*, 2018 WI App 9, ¶45, 380 Wis. 2d (continued)

The no-merit report also discusses whether there would be any arguable merit to challenging Brown’s pleas. Our independent review of the record confirms that the plea colloquy sufficiently complied with *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 required matters. Therefore, Brown’s pleas were valid and operated to waive all nonjurisdictional defects and defenses, including alleged violations of constitutional rights prior to the plea. See *State v. Riekkoff*, 112 Wis. 2d 119, 123, 332 N.W.2d 744 (1983).

Finally, we agree with counsel’s conclusion in the no-merit report that there would be no arguable merit to challenging the circuit court’s exercise of sentencing discretion. On the reckless homicide count, the court imposed twenty-five years of initial confinement and fifteen years of extended supervision. On the attempted intentional homicide count, the court imposed ten years of initial confinement and ten years of extended supervision, to run consecutively to the sentence on the first count. The sentences imposed were within the legal maximum. 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

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276, 908 N.W.2d 198; *State v. Kraemer*, 156 Wis. 2d 761, 764-65, 457 N.W.2d 562 (Ct. App. 1990). Because this appeal is a no-merit appeal, we have considered whether there are any arguably meritorious claims of ineffective assistance of counsel that stem from the waiver decision, such as a claim against trial counsel for not pursuing interlocutory appeal or against postconviction counsel for failing to preserve claims against trial counsel. See *State ex rel. Panama v. Hepp*, 2008 WI App 146, ¶27, 314 Wis. 2d 112, 758 N.W.2d 806 (discussing the raising of unpreserved issues in the context of a no-merit appeal).

Here, because there is no arguable merit to challenging the circuit court’s decision denying reverse waiver, there are no arguably meritorious associated ineffective assistance claims: “an attorney’s failure to pursue a meritless motion does not constitute deficient performance.” *State v. Cummings*, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996).

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.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report and discharges appellate counsel of the obligation to represent Brown further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jeremy Newman is relieved of further representation of Andre Brown in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*