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DISTRICT III

November 21, 2023

To:

Hon. Leon D. Stenz
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Penny Carter
Clerk of Circuit Court
Forest County Courthouse
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Marvin Batton 512189
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

Dennis Schertz
Electronic Notice

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

2022AP15-CRNM State of Wisconsin v. Marvin Batton (L. C. No. 2020CF47)

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).

Counsel for Marvin Batton has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ concluding that no grounds exist to challenge Batton's convictions for possession with intent to deliver heroin (more than ten grams but not more than fifty grams) and possession with intent to deliver cocaine (more than forty grams), both counts as a repeater and as a party to the crime. Batton was informed of his right to file a response to the no-merit report,

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

but he has not responded. 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. *See* WIS. STAT. RULE 809.21.

The State charged Batton with six counts, each as a party to the crime and as a repeater: delivery of schedule I or II narcotics; manufacture/delivery of cocaine (more than one gram but not more than five grams); possession with intent to deliver heroin (more than ten grams but not more than fifty grams); possession with intent to deliver cocaine (more than forty grams); possession of drug paraphernalia; and maintaining a drug trafficking place.

According to the criminal complaint, Batton's codefendant sold cocaine and heroin to a confidential informant during a controlled buy outside of the codefendant's residence. Later the same day, law enforcement searched the residence, pursuant to a warrant. During the search, officers found Batton in a bedroom lying on the floor between a chair and a bed. Near the bed, officers found a digital scale and two homemade foil smoking devices. Under the bed, near Batton's location, officers found a black pouch containing cocaine and heroin, packaged in plastic baggies and bindles. The black pouch also contained a Milwaukee Brewers jacket with \$3,470 in cash in an interior pocket. Six of the bills from the jacket had serial numbers that matched bills that were used in the controlled buy earlier that day.

Following his arrest, Batton waived his *Miranda*² rights and agreed to speak with a detective. During the interview, Batton acknowledged that the Brewer's jacket, the money inside it, and the cocaine and heroin found in his codefendant's residence belonged to Batton.

Batton later moved to suppress his inculpatory statements from the interview, arguing that they were involuntary because the interview "was conducted in a relaxed, casual manner, as though nothing especially serious was at stake and as though the exchange was not being directed ineluctably toward the goal of getting Mr. Batton to make inculpatory statements." The circuit court held a suppression hearing, during which the detective who interviewed Batton was the only witness. The court also reviewed a video recording of the interview. The court ultimately denied Batton's suppression motion, concluding the totality of the circumstances did not support a determination that Batton's statements were involuntary.

Batton subsequently entered guilty pleas to the charges of possession with intent to deliver heroin and possession with intent to deliver cocaine, as a repeater and as a party to the crime, pursuant to a plea agreement. In exchange for Batton's pleas, the remaining counts were dismissed and read in. The defense was free to argue at sentencing. The State agreed to recommend sentences of fifteen years' initial confinement followed by ten years' extended supervision on each count of conviction, concurrent with each other and with any other sentence, along with fines totaling \$7,000.

Following a plea colloquy, supplemented by a plea questionnaire and waiver of rights form, the circuit court accepted Batton's guilty pleas, finding that they were freely, voluntarily,

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

and intelligently made. Batton stipulated that there was an adequate factual basis for his pleas, and the court found that an adequate factual basis existed.

The circuit court then proceeded directly to sentencing. After the parties made their sentencing arguments and Batton exercised his right of allocution, the court sentenced Batton to twelve years' initial confinement followed by eight years' extended supervision on each count, concurrent with each other but consecutive to any other sentence. During its sentencing remarks, the court explained that its primary objectives in sentencing Batton were punishment, protection of the community, and deterrence. The court further explained that the sentences imposed were the minimum amount of time necessary to accomplish those objectives. The court also imposed fines totaling \$6,000.

The no-merit report addresses: (1) whether the circuit court erred by denying Batton's suppression motion; (2) whether Batton's guilty pleas were knowing, intelligent, and voluntary; (3) whether the court erroneously exercised its sentencing discretion; and (4) whether Batton's trial attorney was constitutionally ineffective. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further. With some exceptions not relevant here, Batton's valid guilty pleas waived all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of further representation of Marvin Batton 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