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**DISTRICT III**

January 4, 2024

To:

Hon. Scott L. Horne  
Circuit Court Judge  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Kari Tidquist  
Clerk of Circuit Court  
Trempealeau County Courthouse  
Electronic Notice

Dajuan Cortez Thomas R67061  
Stateville Correctional Institution  
16830 IL-53  
Joliet, IL 60434

Roberta A. Heckes  
Electronic Notice

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

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2023AP1296-CRNM      State of Wisconsin v. Dajuan Cortez Thomas  
(L. C. No. 2021CF95)

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 Dajuan Cortez Thomas has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),<sup>1</sup> concluding that no grounds exist to challenge Thomas's conviction for one count of possession with intent to deliver cocaine, as a party to the crime. Thomas was informed of his right to file a response to the no-merit report, but he has not responded. After reviewing the record, this court identified two defects in the circuit court's plea colloquy, and we

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

ordered appellate counsel to file a supplemental no-merit report addressing whether either defect gave rise to an issue of arguable merit. Having reviewed the supplemental no-merit report, and upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we now 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 Thomas with possession with intent to deliver cocaine (more than forty grams), as a party to the crime. According to the criminal complaint, a law enforcement officer stopped Thomas's vehicle after he observed it speeding and following a semitrailer at an unsafe distance. When the officer made contact with Thomas and his passenger, "the vehicle occupants rolled down the window a minimal amount," which the officer believed was consistent with an attempt to conceal an odor within the vehicle. During the traffic stop, the officer noticed a faint odor of burned marijuana coming from inside the vehicle. The officer also noticed that Thomas was breathing heavily and rapidly and that his hands shook when he handed the officer his license and a vehicle rental agreement. Thomas's passenger avoided making eye contact with the officer, and the officer noticed that the passenger's hands were also trembling.

Based on his observations, the officer believed that Thomas's vehicle contained contraband. He therefore deployed his canine partner to perform a free-air sniff of the vehicle's exterior, and the canine alerted to the presence of illegal drugs. The officer then searched the vehicle and found a large brick of compressed white powder, which weighed approximately 300 grams and field tested positive for cocaine. The officer also found \$2,477 in cash on Thomas's person.

Thomas moved to suppress the evidence obtained during the traffic stop, arguing that the officer lacked reasonable suspicion for the stop, that the stop was unlawfully extended to perform a canine sniff, that the dog's alert did not give rise to probable cause to search Thomas's vehicle, and that the officer used unreasonable force by arresting him at gunpoint. The circuit court denied Thomas's motion, following a suppression hearing at which the officer who stopped Thomas's vehicle testified and a video of the stop was introduced into evidence.

Pursuant to a plea agreement, Thomas subsequently entered a no-contest plea to an amended charge of possession with intent to deliver cocaine (more than fifteen but not more than forty grams), as a party to the crime. In exchange for Thomas's plea to the amended charge, the State agreed to cap its sentence recommendation at the term of initial confinement recommended in the presentence investigation report (PSI). The State also agreed that Thomas's sentence in this case could run concurrent with any sentence that he might receive in a pending Illinois case. The State further agreed to recommend a \$2,000 fine. The defense was free to argue at sentencing. The parties also agreed that Thomas's court costs would be paid from his cash bond and that the remainder of the bond would be returned to the poster.

Following a plea colloquy, supplemented by a plea questionnaire and waiver of rights form, the circuit court accepted Thomas's no-contest plea, finding that it was freely, voluntarily, and intelligently made. With Thomas's agreement, the court determined that the facts set forth in the criminal complaint provided an adequate factual basis for the plea.

The PSI recommended that the circuit court sentence Thomas to four years' initial confinement followed by three to four years' extended supervision. Consistent with the plea agreement, the State recommended a sentence of four years' initial confinement followed by four

years' extended supervision. The court ultimately sentenced Thomas to two years and six months' initial confinement followed by four years' extended supervision, with five days of sentence credit. Because Thomas had not yet been convicted in his Illinois case, the court declined to specify whether his sentence in the instant case would be concurrent with or consecutive to his possible future Illinois sentence. *See* WIS. STAT. § 973.15(2) (stating that a circuit court may order a sentence to be concurrent with or consecutive to “any other sentence imposed at the same time or previously” (emphasis added)). The court also imposed a \$2,000 fine. The court ordered that the fine and all court costs and surcharges be taken from Thomas's cash bond, and the remainder of the bond would be returned to the poster.

The no-merit report first addresses whether there would be arguable merit to a claim that Thomas's no-contest plea was not knowing, intelligent, and voluntary. We agree with appellate counsel that any challenge to Thomas's plea on that basis would lack arguable merit. The record shows that the circuit court complied with its mandatory duties during the plea colloquy, with two exceptions. *See State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. However, neither of those deficiencies gives rise to an arguably meritorious basis for appeal.

First, during the plea colloquy, the circuit court failed to ascertain whether any threats or promises, other than the plea agreement, had been made in connection with Thomas's anticipated plea. *See id.* Nevertheless, to withdraw his plea on that basis, Thomas would need to allege that the plea was, in fact, based on improper threats or promises. *See State v. Moederndorfer*, 141 Wis. 2d 823, 829 n.2, 416 N.W.2d 627 (Ct. App. 1987). In the supplemental no-merit report, appellate counsel asserts that she spoke with Thomas by phone, and he “agreed, without hesitation,” that: (1) no one made any threats or promises to induce him to enter his plea; (2) he was not forced to enter his plea; (3) he wanted to enter the plea and understood the State's plea

offer; and (4) he does not have any concerns about the plea and does not want to disrupt it. Under these circumstances, we agree with appellate counsel that the court's failure to inquire whether any threats or promises were made in connection with Thomas's plea does not give rise to an arguably meritorious claim for plea withdrawal.

Second, the circuit court failed during the plea colloquy to personally establish Thomas's understanding that the court was not bound by the terms of the plea agreement, including the State's sentence recommendation. *See Brown*, 293 Wis. 2d 594, ¶35. This deficiency does not give rise to an issue of arguable merit, however, because Thomas confirmed to appellate counsel that he "knew that the court was not bound by the plea agreement, even though the court did not ask him during the plea colloquy." *See id.*, ¶2 (explaining that, to receive an evidentiary hearing on a motion for plea withdrawal, a defendant must allege that he or she did not know or understand the information that should have been provided at the plea hearing). Regardless, the court's error in failing to advise Thomas that it was not bound by the terms of the plea agreement was harmless because the court ultimately imposed a sentence that was less than the State's agreed-upon recommendation. *See State v. Johnson*, 2012 WI App 21, ¶14, 339 Wis. 2d 421, 811 N.W.2d 441.

The no-merit report also addresses whether there was an adequate factual basis for Thomas's no-contest plea; whether the circuit court properly denied Thomas's motion to suppress evidence; whether Thomas's trial attorney was constitutionally ineffective; and whether the court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further. In addition to the issues discussed by counsel, we note that Thomas waived his right to personally appear at his plea and sentencing hearings and instead appeared by

videoconference. *See State v. Soto*, 2012 WI 93, ¶46, 343 Wis. 2d 43, 817 N.W.2d 848; *see also* WIS. STAT. § 971.04(1)(g). We also note that, with some exceptions not relevant here, Thomas’s valid no-contest plea forfeited the right to raise other 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 Roberta A. Heckes is relieved of any further representation of Dajuan Cortez Thomas in this matter. *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*