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**DISTRICT III**

January 30, 2024

To:

Hon. Christina M. Mayer  
Circuit Court Judge  
Electronic Notice

Katie Schalley  
Clerk of Circuit Court  
Dunn County Judicial Center  
Electronic Notice

Melissa M. Petersen  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Jevon T. Gotzman  
1287 County Road D  
Glenwood City, WI 54013

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

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2023AP349-CRNM      State of Wisconsin v. Jevon T. Gotzman (L. C. No. 2019CF464)

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).**

Jevon Gotzman appeals from a judgment convicting him of possession with intent to deliver methamphetamine.<sup>1</sup> Attorney Melissa M. Petersen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).<sup>2</sup> Gotzman was informed of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, (1967), we conclude that there are no arguably meritorious issues for appeal.

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<sup>1</sup> As we will discuss below, the judgment of conviction contains a clerical error listing the offense of conviction as possession with intent to deliver amphetamine.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The State charged Gotzman with possession with intent to deliver methamphetamine; possession of drug paraphernalia; possession of tetrahydrocannabinols (THC); operating a motor vehicle while operating privileges were revoked; and one felony count and two misdemeanor counts of bail jumping. The charges arose out of evidence discovered during a traffic stop of Gotzman's vehicle, while Gotzman was released on bond in three cases.

Gotzman moved to suppress the drugs and drug paraphernalia found in his vehicle. At the suppression hearing, a Dunn County sheriff's deputy testified that he initiated a stop of Gotzman's vehicle based upon a defective exhaust system and Gotzman's failure to use turn signals. After Gotzman admitted to the deputy that he did not have a valid driver's license and was the subject of an active warrant, the deputy arrested Gotzman. The deputy noticed that Gotzman was shaking, breathing rapidly, and had a very rigid muscle tone that he had previously observed in individuals using stimulants. The deputy was also aware that Gotzman had previously been arrested for delivery of methamphetamine.

While Gotzman was seated in the back of the deputy's squad car, the deputy walked backed to Gotzman's vehicle and looked through the windows. The deputy observed a metallic butane torch lighter, numerous Q-tips, and several clear, small, "crystalline particulates" that he believed to be methamphetamine. The deputy was aware from his experience and training that butane torch lighters and Q-tips are commonly used in the consumption of methamphetamines. The deputy contacted a K-9 unit but learned that it was unavailable. The deputy then unlocked the vehicle, removed several of the particulates, and conducted field tests that were positive for methamphetamine. The deputy proceeded to perform a more thorough search of the vehicle and, upon doing so, discovered baggies of both methamphetamine and THC as well as drug pipes.

The circuit court initially ruled that the evidence seized from Gotzman's vehicle should be suppressed. The court reasoned that the deputy's attempt to obtain a K-9 unit indicated that the deputy did not subjectively believe that he had probable cause to search the vehicle. The court subsequently reconsidered its decision, however, after the State pointed out that the test for probable cause is objective. *See State v. Lefler*, 2013 WI App 22, ¶8, 346 Wis. 2d 220, 827 N.W.2d 650.

After the circuit court reversed its suppression ruling and deemed the evidence admissible, Gotzman agreed to plead no contest to possession with intent to deliver more than ten but not more than fifty grams of methamphetamine. In exchange, the State agreed to dismiss and read in the remaining charges and to make a joint recommendation for two years' probation, with the parties free to argue regarding conditional jail time. The court accepted Gotzman's plea after conducting a plea colloquy, reviewing Gotzman's signed plea questionnaire, and ascertaining that there was a factual basis to support the plea.

The circuit court proceeded directly to sentencing. After hearing from the parties, the court discussed relevant aspects of the offense, Gotzman's character, and the sentencing goals of community protection, punishment and rehabilitation of the defendant, and deterring others. The court then withheld sentence and imposed a two-year term of probation, with conditions including sixteen days of conditional jail time to be served on weekends, and an additional ninety days to be held in abeyance for the probation agent to impose if necessary.

The no-merit report addresses potential suppression issues and the validity of the pleas and sentences. Upon reviewing the record, we agree with counsel's conclusion that Gotzman has no arguably meritorious basis to raise a suppression issue or to challenge either the pleas or

sentences. The arresting officer had probable cause to search Gotzman's vehicle without a warrant, based upon his observations of Gotzman and seeing the methamphetamine crystals through the car window—i.e., in plain view. *See State v. Tompkins*, 144 Wis. 2d 116, 137, 423 N.W.2d 823 (1988). The circuit court conducted an adequate plea colloquy, and Gotzman does not assert that he misunderstood any of his rights or the nature of the charges. The court imposed a probation term in line with Gotzman's recommendation.

In addition to the issues discussed by counsel, we note that over two years elapsed between the filing of the complaint and Gotzman's conviction, due primarily to COVID-related delays. Because Gotzman's pleas forfeited the right to raise other nonjurisdictional defects and defenses (with some exceptions not relevant here), we need not consider whether there was a speedy trial violation. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886 (discussing general guilty-plea-waiver rule); *Hatcher v. State*, 83 Wis. 2d 559, 563, 266 N.W.2d 320 (1978) (applying guilty-plea-waiver rule to speedy trial issue).

We further note that the judgment of conviction erroneously lists the offense of conviction as possession with intent to deliver amphetamine, rather than methamphetamine.<sup>3</sup> We have considered whether Gotzman has grounds to appeal based upon the discrepancy between the charge as described in the Information and as described in the judgment of conviction. We conclude that the only remedy required is to amend the judgment to conform to the actual plea unambiguously entered by Gotzman and accepted by the circuit court. *See State v. Prihoda*,

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<sup>3</sup> Amphetamine and methamphetamine fall under the same statutory provision, WIS. STAT. § 961.41(1m)(e)3. with the same maximum penalty.

2000 WI 123, ¶24, 239 Wis. 2d 244, 618 N.W.2d 857 (an unambiguous oral pronouncement on the record controls any conflict with the written judgment).

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 amended and, as amended, summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

IT IS ORDERED that this order shall serve to amend the judgment to reflect that Count 1 is a conviction for possession with intent to deliver methamphetamine (more than ten but not more than fifty grams). As amended, the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Melissa M. Petersen is relieved of any further representation of Jevon Gotzman in this matter pursuant to 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*