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DISTRICT IV

February 8, 2024

To:

Hon. Stacy A. Smith
Circuit Court Judge
Electronic Notice

Alecia Pellegrini-Kast
Clerk of Circuit Court
Juneau County Justice Center
Electronic Notice

Kelsey Jarecki Morin Loshaw
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Jennifer L. Vandermeuse
Electronic Notice

Adam Edward Maranto 706399
Fox Lake Correctional Inst.
P.O. Box 147
Fox Lake, WI 53933

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

2022AP756-CRNM State of Wisconsin v. Adam Edward Maranto (L.C. # 2019CF61)

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).

Attorney Kelsey Loshaw, as appointed counsel for Adam Maranto, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Maranto with a copy of the report, and he responded to it. In addition, we ordered counsel to address certain issues further in a first and second supplemental no-merit report. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT.

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

RULE 809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Maranto pled guilty to one count of possession of child pornography. The court imposed a sentence of ten years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether Maranto's plea was entered knowingly, voluntarily, and intelligently. With one exception discussed below, the plea colloquy sufficiently complied with the requirements of *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 charge, the rights Maranto was waiving, and other matters.

In this court's order of September 6, 2023, we directed counsel to review whether there is arguable merit to a postconviction claim for plea withdrawal on the basis that the plea colloquy did not address whether any threats or promises had been made to Maranto. In counsel's supplemental no-merit report, counsel states that, according to Maranto, no threats or promises were made and, therefore, he cannot make the factual allegation necessary to raise this issue in a postconviction motion. For these reasons, there is no arguable merit to a plea withdrawal claim.

The no-merit report also addresses whether there would be arguable merit to an appeal of the circuit court's denial of Maranto's motion to suppress evidence obtained from his phone, which was seized and then searched pursuant to a warrant. That decision is preserved for review on appeal despite the guilty plea waiver rule. WIS. STAT. § 971.31(10).

Maranto argued that the search of a SD memory card located inside his phone was not authorized by the warrant, which authorized the search of the phone's contents but did not

enumerate components in the phone that could be searched. The circuit court determined that the SD card was part of the phone, and was therefore included in the warrant's authorization to search the contents of the phone. We agree with the no-merit report that there is no arguable merit to an appeal of this determination.

Maranto also argued that, if the warrant authorized a search of all of the phone's content, the warrant was overbroad and insufficiently particular because it was not narrowly tailored to those parts of the phone where child pornography might be found. As we understand the circuit court's ruling, it rejected this argument on the ground that, even if the warrant should have been more narrowly tailored to those parts of the phone where child pornography might be found, the evidence to be suppressed in this case was within the scope of what that narrow tailoring would have allowed, and therefore the possible overbreadth of the warrant did not produce evidence against Maranto that could be suppressed on that basis.

Even if Maranto were to succeed on appeal in arguing that the warrant was overbroad, the State could argue that the exclusionary rule should not be applied because police reasonably relied upon a warrant issued by an independent magistrate. *See State v. Eason*, 2001 WI 98, ¶¶2-3, 245 Wis. 2d 206, 629 N.W.2d 625. Here, the record does not show any reason to believe that the State would not ultimately prevail under this "good faith" exception.

In this court's orders of September 6 and October 9, 2023, we directed counsel to consider a different search issue pertaining to the search warrant. We questioned whether the affidavit supporting the search warrant may have lacked a basis to conclude that the car and phone that the warrant authorized to be seized and searched were associated in some way with

Maranto. Because Maranto did not raise this issue in the circuit court, it would have to be raised as an issue of ineffective assistance of counsel.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.*

As with the previous issue, we conclude that this issue lacks arguable merit due to the good faith exception. The warrant clearly authorized search and seizure of car and phone and, with the potential exception of omitting a connection between Maranto and the vehicle, was supported by probable cause.

Finally, the no-merit report addresses Maranto's sentence. As explained in the no-merit report, the sentence is 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 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.

In Maranto's response to the no-merit report, he addressed issues regarding the search that are resolved by the discussion above.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Loshaw is relieved of further representation of Maranto 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