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DISTRICT I

April 30, 2024

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Carl W. Chesshir
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Deangelo Cornell Jones
5022 North Sherman Boulevard
Milwaukee, WI 53209

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

2022AP1248-CRNM State of Wisconsin v. Deangelo Cornell Jones
(L.C. # 2019CF4559)

Before Donald, P.J., Geenen and Colón, 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).

Deangelo Cornell Jones appeals a judgment of conviction entered after he pled guilty to five counts of delivery of a controlled substance. His appellate counsel, Attorney Carl W. Chesshir, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Jones received a copy of the no-merit report and was advised that he had the right to respond, but he did not file a response. At our request, Attorney

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

Chesshir filed a supplemental no-merit report after two transcripts were belatedly prepared and added to the appellate record.[2] Upon consideration of the no-merit reports and an independent review of the record as mandated by ***Anders***, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State filed a criminal complaint alleging that Jones delivered heroin, cocaine, and fentanyl to a confidential informant in a series of five transactions in Milwaukee during the period from May 15, 2019, through June 20, 2019. Police orchestrated and surveilled all five of the transactions. Following laboratory testing, the State filed an amended information charging Jones with five counts of delivering three grams or less of heroin and five counts of delivering one gram or less of cocaine, each as a second or subsequent offense. Jones disputed the charges for some time, but in due course he decided to resolve the case with a plea agreement.[3] In exchange for his guilty pleas to four counts of delivering three grams or less of heroin and one count of delivering one gram or less of cocaine, the State moved to dismiss the allegations that the crimes were second or subsequent offenses. The State also promised to recommend an evenly bifurcated six-year term of imprisonment as a global disposition, and the State moved to dismiss and read in the remaining five counts.

The circuit court accepted Jones's guilty pleas and the case proceeded immediately to sentencing. For each count of delivering heroin, Jones faced a maximum penalty of a $25,000

[2] One transcript reflected further proceedings held when Jones arrived late for a court appearance. The other reflected a portion of the sentencing hearing. Counsel's supplemental no-merit report stated counsel's conclusion that "no issues of merit are contained within these transcripts."

[3] The plea also resolved a second case in which Jones was charged with bail jumping and possessing a firearm while a felon. Jones did not pursue an appeal in that matter, and it is not before us. *See* WIS. STAT. RULE 809.10(1)(e). We do not discuss it further.

fine and twelve years and six months of imprisonment. *See* WIS. STAT. §§ 961.41(1)(d)1., 939.50(3)(f) (2019-20). For delivering cocaine, Jones faced a maximum penalty of a $25,000 fine and ten years of imprisonment. *See* WIS. STAT. §§ 961.41(1)(cm)1g., 939.50(3)(g) (2019-20). The circuit court imposed five concurrent seven-year sentences, each bifurcated as three years of initial confinement and four years of extended supervision. The circuit court found Jones eligible for the challenge incarceration program and the substance abuse program after completing eighteen months of initial confinement, and the circuit court granted Jones 387 days of sentence credit on each count.[4]

In the no-merit reports, appellate counsel first considers the potential issue of whether Jones entered his guilty pleas knowingly, intelligently, and voluntarily. This court agrees with appellate counsel's analysis of that potential issue and concludes that further pursuit of a challenge to Jones's guilty pleas would lack arguable merit. Additional discussion of that issue is not warranted.

Appellate counsel's no-merit reports also include appellate counsel's assessment of whether Jones could mount an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

[4] Jones requested 388 days of sentence credit, and in support he filed a Pretrial Incarceration Credit form reflecting his calculation of the time that he had spent in presentence custody. The circuit court awarded Jones 387 days because it believed that he had improperly included the day of sentencing in his calculation. *See* ***State v. Kontny***, 2020 WI App 30, ¶12, 392 Wis. 2d 311, 943 N.W.2d 923. Our review of the form reveals that, while Jones's calculation appears to have excluded the day of sentencing, it appears to have improperly included a period of time that he was not in custody in connection with this case, including July 29, 2021, when the circuit court issued a bench warrant for his arrest. Accordingly, although the record reflects anomalies in the calculation of sentence credit, we agree with appellate counsel's conclusion that Jones cannot mount an arguably meritorious claim for additional sentence credit.

Although appellate counsel initially evaluated that issue without the benefit of a sealed portion of the sentencing transcript, this court agrees with appellate counsel that the subsequent availability of the sealed portion—a little more than two pages of transcribed text—does not require a different analysis and that the totality of the sentencing hearing shows a proper exercise of sentencing discretion.

The circuit court indicated that protection of the community and Jones's rehabilitation were the primary sentencing goals, and the circuit court discussed the sentencing factors that it viewed as relevant to achieving those goals. *See* ***id.***, ¶¶41-43. The discussion included consideration of the mandatory sentencing factors, namely, "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court particularly emphasized the steps that Jones had taken towards his rehabilitation while the charges were pending, and the circuit court praised him for his progress. The circuit court concluded, however, that Jones must spend some additional time "in a secure environment to rehabilitate [him]self," and that he must serve four years of extended supervision to demonstrate his ability to conduct himself properly in the community. The aggregate sentence imposed was well within the maximum aggregate sentence allowed by law and cannot be considered unduly harsh or excessive. *See* ***State v. Mursal***, 2013 WI App 125, ¶26, 351 Wis. 2d 180, 839 N.W.2d 173. Pursuit of a challenge to the circuit court's exercise of sentencing discretion would be frivolous within the meaning of ***Anders***.

Last, appellate counsel advises that Jones would like to challenge the circuit court's decision denying reinstatement of the bail that he forfeited when he failed to appear for a pretrial hearing. We agree with appellate counsel that Jones cannot raise that issue within the context of the instant no-merit appeal. The question before us is whether Jones can pursue an arguably

meritorious challenge to his criminal convictions or sentences. *See* ***State v. Tillman***, 2005 WI App 71, ¶¶4, 16, 281 Wis. 2d 157, 696 N.W.2d 574. However, "[b]ail forfeiture appeals are civil in nature" and are distinct from challenges to the judgment of conviction and sentence. ***State v. Wickstrom***, 134 Wis. 2d 158, 164, 396 N.W.2d 188 (1986). Accordingly, an appeal of a pretrial bail forfeiture cannot be pursued in an appeal of the subsequent criminal conviction. ***Ryder v. Society Ins.***, 211 Wis. 2d 617, 620, 565 N.W.2d 277 (Ct. App. 1997). Challenges to a bail forfeiture must be pursued, if at all, under the procedures and deadlines set forth in WIS. STAT. § 808.04, governing civil appeals. ***Wickstrom***, 134 Wis. 2d at 163-64.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of any further representation of Deangelo Cornell Jones 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