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DISTRICT III

June 11, 2024

To:

Hon. David L. Weber
Circuit Court Judge
Electronic Notice

Connie DeFere
Clerk of Circuit Court
Door County Courthouse
Electronic Notice

Lourdes Nerios
Electronic Notice

Colleen Catherine Nordin
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Anthony Gonzalez
Door County Jail
1203 S. Duluth Avenue
Sturgeon Bay, WI 54235

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

2023AP2268-CRNM State of Wisconsin v. Anthony Gonzalez (L. C. No. 2019CF125)

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 Anthony Gonzalez has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ concluding that no grounds exist to challenge Gonzalez's conviction for possession of tetrahydrocannabinols (THC) as a second and subsequent offense, as a repeater. Gonzalez was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*,

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

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.

Following a traffic stop, the State charged Gonzalez with possession of THC as a second and subsequent offense, as a repeater. Gonzalez ultimately entered a no-contest plea to that charge, pursuant to a plea agreement. The agreement provided that the parties would jointly recommend that the circuit court order Gonzalez to pay a \$250 fine, plus court costs. Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the court accepted Gonzalez's no-contest plea, finding that it was entered freely, voluntarily, and intelligently. Gonzalez agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for his plea, and the court found that an adequate factual basis for the plea existed. With the parties' agreement, the court then proceeded directly to sentencing. The court followed the parties' joint recommendation and imposed a \$250 fine, plus court costs.

The no-merit report addresses: (1) whether Gonzalez's no-contest plea was knowing, intelligent, and voluntary; (2) whether there was a factual basis for the plea; and (3) whether the circuit 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.²

The no-merit report does not address whether there would be arguable merit to a claim for plea withdrawal based on ineffective assistance of trial counsel. Nevertheless, having independently reviewed the record, we can discern no arguable basis for such a claim.

In particular, we note that there would be no arguable merit to a claim that trial counsel was constitutionally ineffective by failing to file a suppression motion. The record shows that there was reasonable suspicion for the traffic stop that preceded Gonzalez’s arrest. According to the criminal complaint, Gonzalez was a passenger in a vehicle that law enforcement stopped after learning that the vehicle was registered to an individual with a revoked driver’s license. There is nothing in the record suggesting that law enforcement had any reason to believe at the time of the stop that the person driving the vehicle was not its registered owner. *See State v. Newer*, 2007 WI App 236, ¶¶7-8, 306 Wis. 2d 193, 742 N.W.2d 923 (holding that an officer’s knowledge that a vehicle’s registered owner has a suspended driver’s license provides reasonable suspicion to stop the vehicle, unless the officer discovers information suggesting that the registered owner is not the driver); *Kansas v. Glover*, 589 U.S. 376, 378 (2020) (holding the same, with respect to a registered owner with a revoked license).

² Although Gonzalez has not filed a response to the no-merit report, we note that the record contains a postsentencing letter to the circuit court, in which Gonzalez asserted that he “was informed that [he] would be pleading to a misdemeanor, and only a \$150 ... fine, and when court came, [he] was charged with a felony and a \$1,150 ... fine.” Any claim for plea withdrawal on this basis would lack arguable merit. During the plea colloquy, the circuit court expressly inquired whether Gonzalez understood that he was pleading to a felony, and Gonzalez responded in the affirmative. Furthermore, the plea agreement—which was put on the record during the plea hearing—required a joint recommendation for a \$250 fine plus court costs. Gonzalez did not express any confusion regarding the terms of the plea agreement before the court accepted his no-contest plea.

Thereafter, during the traffic stop, the vehicle's owner gave law enforcement permission to search the vehicle. *See State v. Artic*, 2010 WI 83, ¶29, 327 Wis. 2d 392, 786 N.W.2d 430 (“One well-established exception to the warrant requirement is a search conducted pursuant to consent.”). During the search, police discovered drugs in the vehicle. An officer then contacted Gonzalez's probation agent, who issued a probation hold. Gonzalez was taken into custody on the probation hold, and during a subsequent search of his person, a bag containing a green, leafy substance—which later tested positive for THC—fell out of the leg of his pants. *See State v. Betterley*, 191 Wis. 2d 406, 422-23, 529 N.W.2d 216 (1995) (“[T]he special need for supervision of probationers ... justifies an exception to the warrant requirement that permits warrantless police searches of a probationer which are at least as extensive and require no more cause than is required for searches justified by the search incident to arrest exception.”).

On these facts, any motion to suppress the THC that was found on Gonzalez's person would have been properly denied. As such, there would be no arguable merit to a claim that Gonzalez's trial attorney was constitutionally ineffective by failing to file a suppression motion. *See State v. Wheat*, 2002 WI App 153, ¶23, 256 Wis. 2d 270, 647 N.W.2d 441 (“Trial counsel's failure to bring a meritless motion does not constitute deficient performance.”).

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 Lourdes Nerios is relieved of further representation of Anthony Gonzalez 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