OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

August 27, 2024

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

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

David Malkus
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Antonio Rashad Mathis Sr. 375882
Kenosha Corr. Center
6353 14th Ave.
Kenosha, WI 53143

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

2023AP1959-CRNM State of Wisconsin v. Antonio Rashad Mathis, Sr.
(L.C. # 2020CF3682)

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).

Antonio Rashad Mathis, Sr. appeals from a judgment convicting him as a party to the crime of possession of over forty grams of cocaine with intent to deliver, as a second or subsequent offense. His appellate counsel, Attorney David Malkus, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Mathis filed a response to counsel's no-merit report. After reviewing the record, counsel's

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

report, and Mathis's response, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Mathis was convicted following a guilty plea of possession with intent to deliver over forty grams of cocaine as a second or subsequent offense and as a party to the crime.[2] The charges came after an extensive police investigation, including surveillance of the residence Mathis shared with several of his children and their mother, and surveillance of a "stash house" that Mathis frequented and possessed the keys to. Based on information collected through the investigation and surveillance, police executed a search warrant on the residence and the stash house. The search yielded a total of nearly 379 grams of cocaine, 485 grams of marijuana, and three firearms, as well as large sums of cash, several digital scales, packaging materials, and multiple cell phones.

For Mathis's role in the drug operation, the circuit court imposed a sentence of five years of initial confinement and six years of extended supervision. This no-merit appeal follows.

The no-merit report and response address: (1) whether Mathis's plea was entered knowingly, voluntarily, and intelligently; and (2) whether the circuit court properly exercised its discretion at sentencing.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that

[2] The State charged Mathis with possession with intent to deliver cocaine as a party to a crime, along with penalty enhancers for second or subsequent offense and habitual criminality. At the plea hearing, the State dismissed the habitual criminality penalty enhancer before Mathis entered his guilty plea.

resulted in the defendant actually entering an unknowing, involuntary, and unintelligent plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 272-76, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Pursuant to a plea agreement, Mathis pled guilty to possession with intent to deliver cocaine as a second or subsequent offense and as a party to the crime. The circuit court conducted a standard plea colloquy, inquiring into Mathis's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72.

Mathis and his counsel both stated on the record that there was a factual basis for the plea, and there is nothing in the no-merit report, the response, or the record that leads us to conclude otherwise. The circuit court went to great lengths during the plea colloquy to ensure that there was a factual basis to support the plea, both as to the possession with intent to deliver and party to a crime elements. Mathis told the court that he was pleading guilty because he was, in fact, guilty. In addition, Mathis indicated satisfaction with his attorney and that counsel had satisfactorily responded to all of Mathis's questions throughout the process. Nothing in our independent review of the record would support a claim that trial counsel rendered ineffective

assistance. Mathis has not alleged any other facts in his response that would give rise to a manifest injustice.[3] Therefore, the plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling.[4] *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

There is also no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offense, Mathis's character, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Both Mathis and his attorney had the opportunity to address the court directly, and both did so prior to the court's imposition of sentence. The court also considered statements made at sentencing from Mathis's mother and the mother of several of Mathis's children.

There is also no arguable merit to a claim that the sentence was excessive. The circuit court imposed a sentence of five years of initial confinement and six years of extended supervision. For the underlying offense, Mathis faced a possible sentence of twenty-five years of

[3] In his response to the no-merit report, Mathis observes that in ***State v. Hailes***, 2023 WI App 29, ¶31, 408 Wis. 2d 465, 992 N.W.2d 835, this court held that either the statute providing for increased penalty for habitual criminality or the statute providing for increased penalty for second or subsequent offenses can apply when calculating maximum term of imprisonment, but not both. Mathis argues that he should be entitled to resentencing based on ***Hailes***. In ***Hailes***, we concluded that the defendant was not entitled to plea withdrawal or resentencing despite the fact that his charge contained both penalty enhancers because it was a novel issue at the time of Hailes's sentencing. ***Id.***, 408 Wis. 2d 465, ¶49. Unlike Hailes, Mathis was not subject to an increased maximum sentence under both penalty enhancers because the State dismissed the habitual criminality enhancer prior to Mathis' guilty plea. In addition, the ***Hailes*** opinion was released after Mathis's plea and sentencing and addressed a novel issue. We therefore conclude that there would be no merit to an argument that Mathis is entitled to plea withdrawal or resentencing pursuant to ***Hailes***.

[4] Mathis brought no suppression motion, and nothing in the record suggests a basis for suppression of any relevant evidence.

initial confinement and fifteen years of extended supervision. *See* WIS. STAT. §§ 961.41(1m)(cm)4. (classifying possession with intent to deliver over forty grams of cocaine as a Class C felony); 939.50(3)(c) (providing maximum penalties for a Class C felony); 973.01(2)(b)3. (providing maximum period of initial confinement for a Class C felony). Mathis also faced an additional six years of imprisonment because this was his second or subsequent drug-related conviction. *See* WIS. STAT. § 961.48(1)(a) (providing enhanced penalties for second or subsequent offenses). Under the circumstances, it cannot reasonably be argued that Mathis's sentence is excessive, much less so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Mathis argues that he is entitled to resentencing because the circuit court relied on inaccurate information. He asserts that the court sentenced him for possession of cocaine that did not belong to him. We have already addressed the factual basis for the plea, which Mathis affirmed was true and correct. Our independent review of the record does not support a claim that the court relied on any inaccurate information at sentencing.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Mathis 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