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**DISTRICT IV**

March 22, 2018

To:

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

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2017AP1558-CRNM      State of Wisconsin v. Antoine M. Edwards (L.C. # 2013CF474)

Before Lundsten, P.J., Sherman and Fitzpatrick, 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).**

Antoine Edwards appeals a judgment convicting him, based upon a guilty plea, of a second and subsequent offense of the delivery of less than three grams of heroin. Attorney Michael D. Rosenberg has filed a no-merit report seeking to withdraw as appellate counsel. *See*

WIS. STAT. RULE 809.32 (2015-16);<sup>1</sup> *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the plea and sentence, and whether the present conviction was barred by a federal conviction for another drug offense. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Edwards' ability to understand the proceedings and the voluntariness of his plea, 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. In addition, Edwards provided the court with a signed plea questionnaire with an attached jury instruction setting forth the elements of the offense. The facts set forth in the complaint and acknowledged by Edwards—namely, that another drug dealer had identified Edwards as the source for a heroin sale that had resulted in an overdose death, and that Edwards had a prior drug conviction—provided a sufficient factual basis for the plea. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court's obligations under WIS. STAT. § 971.08. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

In his response, Edwards contends that the charge in this case should have been barred under WIS. STAT. § 961.45 because he had already been sentenced for the same conduct in a federal case, based upon a penalty enhancer that Edwards asserts encompassed the amount of heroin in this case. However, counsel has provided this court with a document from the federal

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

case showing that Edwards was sentenced in the federal case based upon the amount of heroin in that federal case, plus his status as a career criminal due to prior convictions in Illinois and West Virginia. We agree with counsel's analysis that neither the federal charge nor the penalty enhancer involved the same conduct as this case. We further note that there is nothing in the record to suggest that trial counsel's performance was in any way deficient leading up to the plea, and Edwards has not alleged any other facts that would give rise to a manifest injustice warranting plea withdrawal.

A challenge to Edwards' sentence would also lack arguable merit.

The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case, emphasizing that heroin sales and overdoses have become an epidemic plaguing society. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Edwards to two years of initial confinement and five years of extended supervision. The court also ordered restitution in the amount of \$11,337.70 for the funeral expenses of the overdose victim; imposed standard costs and conditions of supervision; and determined that Edwards was eligible for the substance abuse program.

The sentence imposed did not exceed the maximum available penalty. *See* WIS. STAT. §§ 961.41(1)(d)1. (classifying the delivery of less than 3 grams of heroin as a Class F felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony); 961.48(1)(b) (increasing the maximum term of imprisonment by four years for a second or subsequent offense). Nor was the sentence unduly harsh, taking into account that the heroin sale had

resulted in an overdose death and that the court did not even make use of the penalty enhancer. See generally *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Michael Rosenberg is relieved of any further representation of Antoine Edwards 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*