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DISTRICT II

December 26, 2018

To:

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

2018AP1579-CRNM	State of Wisconsin v. Terry L. Powless (L.C. #2017CF29)
2018AP1580-CRMM	State of Wisconsin v. Terry L. Powless (L.C. #2017CF49)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Terry L. Powless appeals from judgments of conviction for armed burglary, possession of narcotic drugs, and burglary. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967). Powless

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

received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, the judgments are summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Police were alerted to an intruder inside a daycare facility after hours. Via a surveillance camera, the intruder was observed rifling through desk drawers. Powless was arrested as he exited the facility. He was in possession of a knife. Powless was charged with armed burglary and possession of burglarious tools. After liquid Fentanyl and a marijuana pipe were found in the Powless's car, the complaint was amended to add charges of possession of narcotic drugs and possession of drug paraphernalia. About a month after he was first charged, Powless was charged with burglary and misdemeanor theft committed at a different location on the same night that he was caught at the daycare facility. In the second incident, Powless entered a locked building—"Scout Hall"—and took an envelope containing \$4 in Girl Scout cookie money.

Powless entered no contest pleas to armed burglary, possession of narcotic drugs, and burglary. The other charges were dismissed as read-ins at sentencing. The prosecution agreed to limit its sentencing recommendation to a ten-year prison sentence on the armed burglary conviction, a concurrent two-year prison sentence on the drug possession charge, and on the burglary charge, a four-year total prison sentence to be served consecutively. The prosecution made the promised recommendation at sentencing. Powless was sentenced to six years' initial confinement and four years' extended supervision for armed burglary, a concurrent term of one year initial confinement and one year extended supervision for possession of narcotic drugs, and a consecutive term of two years' initial confinement and three years' extended supervision for

burglary. The court explained why it did not find Powless eligible for any early release programs. There was no objection to restitution of \$225 to the daycare facility.

The no-merit report addresses the potential issues of whether Powless's pleas were knowingly, voluntarily, and intelligently entered, whether each plea was supported by a factual basis, whether Powless was denied the effective assistance of counsel, and whether the sentences were the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. We have also considered whether there is any meritorious basis to challenge the issuance of a search warrant on Powless's car and conclude there is not.

Our review of the record discloses no other potential issues for appeal.² Accordingly, this court accepts the no-merit report, affirms the convictions and discharges appellate counsel of the obligation to represent Powless further in these appeals.

Upon the foregoing reasons,

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

² Any other possible appellate issues from the proceedings before entry of the pleas are waived because Powless's no contest pleas waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

IT IS FURTHER ORDERED that Attorney Roberta A. Heckes is relieved from further representing Terry L. Powless in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals