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DISTRICT I

March 21, 2019

To:

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

2018AP1258-CRNM State of Wisconsin v. Aaron Eugene Baker (L.C. # 2015CF611)

Before Kessler, P.J., Kloppenburg and Dugan, 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).

Aaron Eugene Baker pled guilty to one count of possession with intent to deliver three grams or less of heroin, one count of possession with intent to deliver five grams or less of cocaine, and one count of possession with intent to deliver 200 grams or less of tetrahydrocannabinols (marijuana), each as a second or subsequent offense. The heroin and cocaine convictions each carried maximum penalties of a \$25,000 fine and sixteen and one-half

years of imprisonment. See WIS. STAT. §§ 961.41(1m)(d)1. (2017-18),¹ 961.41(1m)(cm)1r., 939.50(3)(f), 961.48(1)(b). The marijuana conviction carried maximum penalties of a \$10,000 fine and seven and one-half years of imprisonment. See WIS. STAT. §§ 961.41(1m)(h)1., 939.50(3)(i), 961.48(1)(b). The circuit court imposed an aggregate seven-year term of imprisonment bifurcated as four years of initial confinement and three years of extended supervision. Baker appeals.

Appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report and a supplemental no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Baker did not file a response. Based upon our independent review of the record and the no-merit reports, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. See WIS. STAT. RULE 809.21.

The criminal complaint reflects that on February 3, 2015, police observed a Nissan Altima traveling without a front license plate and with a rear license plate that had been reported stolen. The car disregarded several stop signs and then entered a parking lot. Police approached the car and made contact with the occupants. When the car door opened, police smelled a strong odor of fresh marijuana. A person subsequently identified as Baker was in the rear passenger seat. Police observed a plastic baggie protruding from Baker's pocket, and an officer asked him if he had any drugs or weapons. Baker said that he had "a little weed." Police searched him and found a quantity of controlled substances. The State charged Baker with one count each of

¹ Baker was charged, convicted, and sentenced while the 2015-16 version of the Wisconsin Statutes was in effect. The relevant portions of those statutes are unchanged in the current, 2017-18 version. Accordingly, all references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

possession with intent to deliver three grams or less of heroin, possession with intent to deliver five grams or less of cocaine, and possession with intent to deliver 200 grams or less of marijuana, all as a second or subsequent offense.

Baker pursued a motion to suppress the evidence against him. The circuit court denied the motion after a hearing. Baker then decided to resolve the charges with a plea bargain. Under its terms, he pled guilty as charged, and the State agreed to recommend an aggregate sentence of five and one-half years of imprisonment bifurcated as two and one-half years of initial confinement and three years of extended supervision.

The matters proceeded to sentencing. For the heroin and cocaine offenses, the circuit court imposed two seven-year terms of imprisonment, each bifurcated as four years of initial confinement and three years of extended supervision. For the marijuana offense, the circuit court imposed an evenly bifurcated four-year term of imprisonment. The circuit court ordered Baker to serve all of the sentences concurrently with each other and concurrently with a twenty-two-month term of imprisonment that he was already serving in another matter. The circuit court found Baker eligible for the Wisconsin substance abuse program and the challenge incarceration program after completion of two years of initial confinement, and the circuit court ordered that Baker receive 259 days of sentence credit.

In the no-merit and supplemental no-merit reports, appellate counsel examines the order denying Baker's suppression motion, the validity of Baker's guilty pleas, and the circuit court's exercise of sentencing discretion. Upon our independent review of the record and the no-merit reports, we conclude that appellate counsel accurately analyzed the potential issues, and we

agree with appellate counsel that they lack arguable merit. Additional discussion of those issues is not warranted.

Appellate counsel does not discuss the circuit court's decision to find Baker eligible for the challenge incarceration program and the Wisconsin substance abuse program only after he completes two years of initial confinement. We conclude that Baker cannot mount an arguably meritorious challenge to his delayed eligibility for those prison programs. The circuit court sentenced Baker on October 19, 2015, and he has thus already served two years of initial confinement. Moreover, the record contains both a notification from the Department of Corrections that Baker successfully completed the Wisconsin substance abuse program and a circuit court order modifying his sentences based on his successful participation in the program.² Accordingly, any challenge to the two-year delay in his eligibility for prison programs has been rendered moot. *See State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 (explaining that “[a]n issue is moot when its resolution will have no practical effect on the underlying controversy”). As a general rule, courts do not consider moot issues. *See id.* Although some exceptions to the rule exist, *see id.*, nothing in the record demonstrates that those exceptions are applicable here.

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

² Pursuant to WIS. STAT. § 302.05(3)(c), a person who successfully completes the Wisconsin substance abuse program earns a sentence modification converting the person's remaining initial confinement time to extended supervision time.

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

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of any further representation of Aaron Eugene Baker on 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