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 III

January 22, 2020

To:

Hon. James J. Duvall
Circuit Court Judge
407 Second St. S.
Alma, WI 54610

Kerry Feuerhelm
Clerk of Circuit Court
Pierce County Courthouse
P.O. Box 129
Ellsworth, WI 54011-0129

Susan E. Alesia
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Frances Philomene Colbert
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Sean E. Froelich
Pierce County District Attorney
P.O. Box 808
Ellsworth, WI 54011-0808

Reed O. Christopherson
N6310 490th Street
Beldenville, WI 54003-5104

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2018AP1148-CRNM State of Wisconsin v. Reed O. Christopherson
(L. C. No. 2017CF1)

Before Stark, P.J., Hruz and Seidl, 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 Reed Christopherson has filed a no-merit report concluding no grounds exist to challenge Christopherson's conviction for possession with intent to deliver between three and ten grams of methamphetamine. Christopherson was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as

mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude 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 (2017-18).[1]

The State charged Christopherson with one count each of possession with intent to deliver between three and ten grams of methamphetamine and possession of drug paraphernalia. The Complaint alleged that on a late-December evening, after dark, a sheriff's deputy observed a vehicle driving with its headlights off. As the vehicle approached the deputy, the driver turned the headlights on to high beam mode, turned the headlights off, and then turned the high beams back on. The deputy initiated a stop and identified the driver as Christopherson. During their interaction, the deputy observed that Christopherson had slurred speech and facial twitching along with dilated, bloodshot, and glossy eyes.

After processing Christopherson's name, the deputy learned that Christopherson was on probation following his conviction for possession with intent to distribute amphetamine. The deputy subsequently asked Christopherson to exit the vehicle, and during their interaction, Christopherson "got very fidgety" and "kept looking over" at a bag sitting on the passenger seat. Christopherson eventually performed field sobriety tests. Although the deputy did not feel he had probable cause to arrest Christopherson based on the tests, he still believed Christopherson was under the influence of methamphetamine. The deputy then informed Christopherson that he

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

intended to search the vehicle pursuant to Act 79.[2] When the deputy asked whether he was going to find anything in the vehicle, Christopherson responded that he would find a bag that did not belong to him. Within the bag, the deputy found drug paraphernalia and two bags of a "white crystal like substance" that later tested positive for methamphetamine.

Christopherson filed a suppression motion arguing that Act 79 is unconstitutional and that the deputy lacked reasonable grounds to search the vehicle. Although the circuit court initially granted the suppression motion, it later granted the State's motion for reconsideration. During subsequent pretrial proceedings, the court granted defense counsel's request for a competency examination and following an examination, Christopherson was found competent to proceed. In exchange for Christopherson's no-contest plea to the methamphetamine possession charge, the State agreed to recommend dismissal of the remaining charge. The State also agreed to join in defense counsel's recommendation of three years' probation, concurrent to the sentence Christopherson was already serving. The court imposed a sentence consistent with the joint recommendation.

---

[2] 2013 Wisconsin Act 79 created a number of different statutes that require reasonable suspicion for a law enforcement search of people on community supervision, thereby creating a statutory exception to the warrant requirement. Relevant to this case, WIS. STAT. § 973.09(1d) provides, in relevant part:

> If a person is placed on probation for a felony … the person … and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of probation.

The statute adds that "[a]ny search … shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing." ***Id.***

Although the no-merit report does not specifically address it, we conclude there is no arguable merit to challenge the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." ***State v. Byrge***, 2000 WI 101, ¶28, 237 Wis. 2d 197, 614 N.W.2d 477. To determine legal competency, the circuit court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. ***Id.***, ¶¶30-31. A circuit court's competency determination should be reversed only when clearly erroneous. ***Id.***, ¶46.

An examining psychologist submitted a report opining to a reasonable degree of professional certainty that Christopherson did not lack the substantial capacity to understand his charges or to assist in his defense, outlining the reasoning behind her opinion. At the competency hearing, defense counsel indicated she was no longer raising the issue of competency. Based on the psychologist's report, the circuit court found Christopherson competent to proceed. The record supports the court's determination.

The no-merit report addresses whether the circuit court properly denied the suppression motion, including a discussion of whether law enforcement had sufficient reasonable suspicion to search the vehicle, and whether there is any arguable merit to a claim that Act 79 is unconstitutional. The no-merit report also addresses whether Christopherson knowingly, intelligently and voluntarily entered his no-contest plea, and whether there is any arguable merit to challenge the sentence imposed. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that none of these issues has arguable merit.

We note that during the plea colloquy, the circuit court failed to inform Christopherson that it was not bound by the terms of the plea agreement, as required under ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14. However, Christopherson received the benefit of the plea agreement. Therefore, this defect in the colloquy does not present a manifest injustice warranting plea withdrawal. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441.

The circuit court also failed to advise Christopherson of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). Because the record shows Christopherson is a United States citizen not subject to deportation, any challenge to the plea on this basis would lack arguable merit. The no-merit report otherwise sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorneys Frances Philomene Colbert and Susan E. Alesia are relieved of their obligation to further represent Reed Christopherson in this matter. *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