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**DISTRICT I**

September 29, 2020

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

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2019AP1731-CRNM	State of Wisconsin v. Fabion Amin Wilder (L.C. # 2018CT432)
2019AP1732-CRNM	State of Wisconsin v. Fabion Amin Wilder (L.C. # 2018CF1539)

Before Brash, P.J., Dugan and Donald, 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).**

Fabion Amin Wilder appeals judgments of conviction entered upon his guilty pleas to one misdemeanor count of resisting a traffic officer and one felony count of fleeing a traffic officer. He also appeals a postconviction order entered in both cases denying sentence

modification.<sup>1</sup> Appellate counsel, Assistant State Public Defender Carly Cusack, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32.<sup>2</sup> Wilder did not file a response. Upon consideration of the no-merit report and an independent review of the records as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

In Milwaukee County Circuit Court case No. 2018CT432, which underlies appeal No. 2019AP1731-CRNM, the State alleged in a criminal complaint that on December 21, 2017, Wilder was driving a motor vehicle on a Milwaukee highway and failed to stop promptly after receiving a signal to stop from a marked police vehicle. The State charged Wilder with one misdemeanor count of resisting a traffic officer by failing to stop his vehicle.

In Milwaukee County Circuit Court case No. 2018CF1539, which underlies appeal No. 2019AP1732-CRNM, the State alleged in a criminal complaint that on April 1, 2018, Wilder was driving a motor vehicle when police signaled him to stop near the 2300 block of West Hopkins Street. Wilder increased his speed and led police on a chase through the city streets of Milwaukee, reaching speeds of ninety-three miles per hour. Police arrested him after his car

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<sup>1</sup> Each of the September 13, 2019 notices of appeal filed in these matters states that Wilder appeals from a judgment of conviction, but each notice also references a July 19, 2019 postconviction order that denied sentence modification. We construe each notice of appeal as encompassing the postconviction order. *See* WIS. STAT. RULE 809.10(1) (f)(2017-18) (“An inconsequential error in the content of the notice of appeal is not a jurisdictional defect.”); *see also Rhyner v. Sauk Cnty.*, 118 Wis. 2d 324, 326, 348 N.W.2d 588 (Ct. App. 1984) (reflecting that a notice of appeal is sufficient if the appellate court can tell what is being appealed). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> Attorney Cusack left her position with the State Public Defender’s Office after she filed the no-merit report in these matters. The State Public Defender subsequently appointed Assistant State Public Defender Pamela Moorshead as successor counsel for Wilder.

struck a concrete median near the 2000 block of West Olive Street, and he attempted to flee on foot. The State charged him with one felony count of fleeing a traffic officer and one misdemeanor count of obstructing an officer.

On June 28, 2018, Wilder advised the circuit court that he wished to resolve the pending charges short of trial. The State then described the terms of the plea agreement. Wilder would plead guilty to both the misdemeanor count of resisting a traffic officer charged in case No. 2018CT432, and the felony count of fleeing a traffic officer charged in case No. 2018CF1539. The State would recommend ten months in jail for the felony and a consecutive thirty days in jail for the misdemeanor, but would take no position on whether those sentences should be concurrent with or consecutive to the time Wilder was already serving following revocation of his extended supervision in Milwaukee County Circuit Court case No. 2013CF1018. Additionally, the State would move to dismiss the charge of obstructing an officer. The circuit court accepted Wilder's guilty pleas to the misdemeanor in case No. 2018CT432, and the felony in case No. 2018CF1539, and granted the State's motion to dismiss the remaining charge of obstructing an officer. The matters proceeded immediately to sentencing.

For the misdemeanor conviction in case No. 2018CT432, Wilder faced maximum penalties of nine months in jail and a ten thousand dollar fine. *See* WIS. STAT. §§ 346.04(2t), 346.17(2t). For the felony conviction in case No. 2018CF1539, Wilder faced maximum penalties of three years and six months of imprisonment and a ten thousand dollar fine. *See* WIS. STAT. §§ 346.04(3), 346.17(3)(a), 939.50(3)(i). The circuit court imposed six months in jail as a penalty for the misdemeanor and ordered Wilder to serve that sentence consecutive to the sentence he was serving in case No. 2013CF1018. The circuit court imposed fourteen months of

initial confinement and twenty-four months of extended supervision as a penalty for the felony conviction in 2018CF1539, and ordered Wilder to serve that sentence concurrently with both the misdemeanor sentence in case No. 2018CT432, and the sentence in case No. 2013CF1018. The circuit court also awarded Wilder eighteen days of presentence credit in case No. 2018CF1539.

In postconviction proceedings, the circuit court addressed inquiries from the Department of Corrections and Wilder regarding his presentence credit and amended the judgment of conviction in case No. 2018CF1539 to reflect a total of forty-three days of credit. The circuit court also addressed Wilder's postconviction motion for sentence modification based on an alleged new factor and denied relief in both cases.

We first consider whether Wilder could pursue an arguably meritorious challenge to the validity of his guilty pleas. We agree with appellate counsel that he could not do so. At the outset of the plea hearing, the circuit court established that Wilder was twenty-eight years old, had completed high school, and had some post-secondary education. The circuit court also established that Wilder had signed a plea questionnaire and waiver of rights form and an addendum in each case, and that the information in those forms and attachments was true and correct. *See State v. Hoppe*, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The circuit court then conducted a plea colloquy that complied with the circuit

court's obligations when accepting a plea other than not guilty.<sup>3</sup> See WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *State v. Brown*, 2006 WI 100, ¶¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The records—including the plea questionnaire and waiver of rights forms and addenda, the attached documents describing the elements of the crimes to which Wilder pled guilty, and the plea hearing transcript—demonstrate that Wilder entered his guilty pleas knowingly, intelligently, and voluntarily. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

We also agree with appellate counsel that Wilder could not mount an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court discussed appropriate sentencing factors, including the gravity of the offenses, Wilder's character, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentences that the circuit court imposed were within the maximums allowed by law and cannot be considered unduly harsh or unconscionable. See *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

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<sup>3</sup> The circuit court warned Wilder that a guilty plea carries risks of deportation, exclusion from this country, and denial of naturalization, but the circuit court gave those warnings without using the precise language mandated by WIS. STAT. § 971.08(1)(c). Minor deviations from the statutory language, however, do not undermine the validity of a guilty plea. See *State v. Mursal*, 2013 WI App 125, ¶20, 351 Wis. 2d 180, 839 N.W.2d 173. Moreover, before a defendant may seek plea withdrawal based on the circuit court's failure to comply with § 971.08(1)(c), the defendant must show that "the plea is likely to result in the defendant's deportation, exclusion from admission to this country or denial of naturalization." See § 971.08(2). Nothing in the records suggests that Wilder could make such a showing.

Last, we agree with appellate counsel's conclusion that Wilder could not pursue an arguably meritorious challenge to the circuit court's order denying sentence modification. Wilder alleged in postconviction proceedings that he failed to comply promptly when the police signaled for him to stop his vehicle on December 21, 2017, because he received the signal on an isolated stretch of highway, he had been treated roughly in prior traffic stops, and he did not want to encounter the police until he reached a more highly trafficked area where he might be treated more gently. Wilder asserted that the circuit court was unaware of his reasoning and argued that it constituted a new factor warranting sentencing relief, particularly when coupled with video recorded at the time of his arrest demonstrating, he said, that his concerns about rough treatment were well-founded.

Whether information constitutes a new factor is a question of law for our *de novo* review. See *State v. Harbor*, 2011 WI 28, ¶33, 333 Wis. 2d 53, 797 N.W.2d 828. The circuit court correctly determined here that, as a matter of law, Wilder did not offer a new factor in his postconviction motion because the allegedly new information was known to him at the time of sentencing and could have been disclosed to the circuit court at that proceeding. See *State v. Crockett*, 2001 WI App 235, ¶14, 248 Wis. 2d 120, 635 N.W.2d 673 (explaining that information known to the defendant at the time of sentencing is not a new factor). Moreover, the circuit court found that the information presented in Wilder's postconviction motion did not warrant sentence modification even assuming the information could be deemed a new factor. See *Harbor*, 333 Wis. 2d 53, ¶37 (holding that the determination of whether a new factor justifies sentence modification rests in the circuit court's discretion). The circuit court explained that the aggregate sentence imposed in these cases increased Wilder's confinement by less than six months beyond the reconfinement term he was already serving and, in the circuit court's

view, the limited additional confinement was necessary to punish Wilder for his dangerous behavior. The circuit court's analysis represents a proper exercise of discretion. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

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

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of any further representation of Fabion Amir Wilder. *See* 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*