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DISTRICT IV

October 29, 2020

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

2019AP685-CRNM	State of Wisconsin v. Scott E. Szerlong (L.C. # 2012CF473)
2019AP686-CRNM	State of Wisconsin v. Scott E. Szerlong (L.C. # 2014CF184)
2019AP687-CRNM	State of Wisconsin v. Scott E. Szerlong (L.C. # 2014CF190)
2019AP688-CRNM	State of Wisconsin v. Scott E. Szerlong (L.C. # 2015CF97)
2019AP689-CRNM	State of Wisconsin v. Scott E. Szerlong (L.C. # 2015CF104)

Before Blanchard, Kloppenburg, and Nashold, 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).

Attorney Lane Fitzgerald, appointed counsel for Scott Szerlong, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Szerlong with a copy of the report, and both counsel and this court advised him of his right to file a response. Szerlong has not responded. We conclude that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the records, we conclude there is no arguable merit to any issue that could be raised on appeal.

In the five circuit court cases underlying these appeals, Szerlong was convicted of six felony counts of financial crimes such as forgery and uttering, and eighteen counts of possession of child pornography. The court imposed concurrent sentences on all counts, with the controlling sentences being for nine years of initial confinement and nine years of extended supervision.

The no-merit report addresses whether Szerlong's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charges, the rights Szerlong was waiving, and other matters. The records show no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erred in denying Szerlong's motion to suppress evidence in the child pornography case. The report describes the court's

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

decision and states that this issue would have no arguable merit, but counsel does not provide his own legal analysis or other explanation for this conclusion.

Szerlong argued in circuit court that the officer who arrested him made a warrantless search of the content of a phone Szerlong was carrying at the time of arrest, and that such evidence, along with any derivative evidence, should be suppressed. Although evidence of child pornography was found on that phone, the charges in this case were based on images found on a computer in Szerlong's nearby hotel room. Szerlong appears to have been arguing that the contents of the computer should be suppressed as a fruit of the improper search of the phone.

The circuit court denied the motion on the ground that the images on the phone would have inevitably been discovered based on a warrant in connection with the investigation of the financial crimes that was in progress when Szerlong was arrested. The court may have further been implying that, once the phone was properly searched based on such a warrant, and those images were found, there would also have been grounds to obtain a warrant to search the computer.

We conclude that it would be frivolous for Szerlong to argue that the computer images would not inevitably have been discovered. Although the circuit court's analysis appears sound, we rely on a slightly different analysis.

Police obtained a search warrant for the hotel room, including the computer. The affidavit for that warrant shows that it was based only on information related to the financial crimes, and did not mention the phone.

When police searched that computer and found evidence of child pornography, they obtained a second warrant specifically to search the computer for child pornography. Although that later affidavit mentioned the images found on the phone, it also stated that at least one such image had been found in the review of the computer itself, which was being conducted pursuant to the earlier warrant. Therefore, even without the information about the phone, this affidavit supported a warrant to further search the computer, based on what had already been found on it.

Accordingly, the only sound conclusion is that the investigation of the financial crimes would inevitably have proceeded on a path that led to the images on the computer, even without the search of the phone at the time of Szerlong's arrest. *See State v. Jackson*, 2016 WI 56, ¶¶47-72, 369 Wis. 2d 673, 882 N.W.2d 422 (describing inevitable discovery doctrine).

The no-merit report addresses whether the State violated Szerlong's constitutional right to a speedy trial. This issue was waived by Szerlong's guilty and no-contest pleas. Violations of the right to a speedy trial are waived by entry of a guilty plea. *Edwards v. State*, 51 Wis. 2d 231, 235, 186 N.W.2d 193 (1971).

The no-merit report addresses whether the sentences are within the legal maximums and whether the circuit court erroneously exercised its sentencing discretion. The sentences are within the legal maximums for the reasons described in the no-merit report. The standards for the circuit court and this court on discretionary sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the records discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Fitzgerald is relieved of further representation of Szerlong in these matters. *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