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 1

January 26, 2021

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
901 N. 9th St.
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Elizabeth A. Longo
Assistant District Attorney
District Attorney's Office
821 W. State. St. - Ste. 405
Milwaukee, WI 53233

George Tauscheck
4230 N. Oakland Ave. #103
Milwaukee, WI 53211

Marquise Lamont Brown 605754
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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:

2018AP2351-CRNM State of Wisconsin v. Marquise Lamont Brown
(L.C. # 2017CF2521)

Before Brash, P.J. Dugan and White, 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).

Marquise Lamont Brown appeals from a judgment convicting him of three counts of manufacturing/delivering heroin; three counts of possession of a firearm by a person convicted of a felony; one count of manufacturing/delivering cocaine; one count of possession with intent to deliver heroin; and one count of driving or operating a vehicle without consent. His appellate

counsel, George Tauscheck, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and ***Anders v. California***, 386 U.S. 738 (1967).[1] Brown filed a response[2] and appellate counsel filed a supplemental no-merit report. *See* RULE 809.32(1)(e), (f). Upon consideration of these submissions and an independent review of the record as mandated by ***Anders***, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In a seventy-three page complaint identifying multiple defendants, the State charged Brown with thirteen drug and gun-related charges and one charge of operating a motor vehicle without the owner's consent. The complaint alleged that Brown was a member of a gang that used cars as "rolling drug houses."

Pursuant to the plea negotiations, Brown agreed to plead guilty to nine of the thirteen charges, with the remaining four charges to be dismissed and read-in at sentencing. The State agreed to dismiss the weapon enhancers that related to the charges to which Brown pled and to recommend an aggregate sentence of sixteen years of initial incarceration and ten years of extended supervision. The circuit court accepted Brown's pleas and followed the State's sentencing recommendation.

The no-merit report addresses the potential issues of whether Brown's pleas were knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised

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

[2] This court afforded Brown numerous extensions of time to submit his response.

its sentencing discretion. This court is satisfied that the no-merit report properly concludes the issues it raises are without merit, and we will not discuss them further.[3]

In his response, Brown raises numerous issues, including the following: the charges against him were multiplicitous; trial counsel ("[a]nd [p]ossibly [a]ppellate [c]ounsel") was ineffective "for failing to investigate the charging documents, the plea and sentencing for its appropriateness"; and the police engaged in entrapment insofar as they commissioned, in part, the crime of keeping and maintaining a mobile drug business. Appellate counsel then filed a supplemental no-merit report explaining why there would be no arguable merit to pursuing these issues.

We again agree with appellate counsel's thorough discussion and analysis of the merits of Brown's various claims. Appellate counsel explains that Brown's multiplicity claim fails because the charges to which he pled are not identical in fact. *See* ***State v. Ziegler***, 2012 WI 73, ¶60, 342 Wis. 2d 256, 816 N.W.2d 238 (detailing the two-pronged methodology for analyzing multiplicity claims, which begins with determining whether the offenses are identical in law and fact); *see also* ***State v. Stevens***, 123 Wis. 2d 303, 322, 367 N.W.2d 788 (1985) (explaining that offenses are different in fact if they "are either separated in time or are significantly different in nature").

[3] We note in passing that appellate counsel erroneously stated at one point in his no-merit report that Brown was sentenced to sixteen years of initial confinement and eight years of extended supervision; however, later in the report, appellate counsel properly specified the bifurcated sentence for each of the charges to which Brown plead and properly stated the total sentence. Appellate counsel's isolated misstatement does not invalidate his analysis and conclusion that the circuit court properly exercised its sentencing discretion.

Appellate counsel also explains why the facts do not support Brown's argument that the police engaged in entrapment when they did not arrest him after his first offense. *See* ***State v. Saternus***, 127 Wis. 2d 460, 469, 381 N.W.2d 290 (1986) (holding that entrapment is a defense to a charged crime when the "evil intent" and the "criminal design" of the offense originate in the mind of the government agent, and the defendant would not have committed an offense of that character except for the urging of the government (citation omitted)). We additionally note that there is nothing in the record to suggest that trial counsel's performance was in any way deficient.[4]

In sum, the claims that Brown identifies lack arguable merit. And, because there is no basis in the record that would warrant plea withdrawal, Brown's valid pleas operated to waive all nonjurisdictional defects and defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Brown. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit or importance to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Brown further in this appeal.

[4] Brown's claim of ineffective assistance of appellate counsel hinges on his belief that he has identified meritorious claims that appellate counsel should have discovered. As detailed in this decision, Brown has not identified any arguably meritorious claims. And, in any event, claims of ineffective assistance of appellate counsel must be brought in the form of a petition for a writ of habeas corpus with this court. *See* ***State v. Knight***, 168 Wis. 2d 509, 520, 484 N.W.2d 540 (1992).

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney George Tauscheck is relieved of further representation of Brown 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