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DISTRICT I

March 2, 2021

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge

John Barrett
Clerk of Circuit Court

Elizabeth A. Longo

Brian Mullins

Criminal Appeals Unit
Department of Justice

Timothy E. Rhinehart 563603

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

2020AP1639-CRNM	State of Wisconsin v. Timothy E. Rhinehart (L.C. # 2016CF2975)
2020AP1640-CRNM	State of Wisconsin v. Timothy E. Rhinehart (L.C. # 2017CF703)

Before Brash, P.J., Donald 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).

Timothy E. Rhinehart appeals from judgments of conviction for possession of a firearm by a person adjudicated delinquent and possession of heroin. He also appeals from an order denying his postconviction motion for resentencing. Rhinehart's appellate counsel 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). Rhinehart received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, as mandated by *Anders*, the judgments and the order are summarily

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

affirmed because we conclude that there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The charges arise out of two separate traffic stops of a vehicle driven by Rhinehart. During both stops, officers detected the odor of marijuana. A firearm and bullets were discovered during a search of the vehicle in the first traffic stop. Rhinehart was charged with possession of a firearm by a person adjudicated delinquent. About six months after Rhinehart posted bail in that case, the second stop occurred and Rhinehart was found to be in possession of heroin. He was subsequently charged with possession of heroin with intent to deliver and felony bail jumping. Pursuant to a plea agreement, Rhinehart entered a guilty plea to the firearm charge and the heroin charge was reduced to simple possession. The bail jumping charge was dismissed as a read-in at sentencing. Rhinehart was sentenced to the maximum terms on each conviction to be served consecutively, for a total of six and one-half years of initial confinement and seven years of extended supervision. Rhinehart was denied eligibility for the challenge incarceration and substance abuse programs.

Rhinehart filed a postconviction motion for resentencing on the ground that his trial counsel was ineffective for failing to inform the sentencing court that Rhinehart suffers from post-traumatic stress disorder and a mental health disorder. The trial court denied the motion finding that even if trial counsel's performance was deficient, Rhinehart was not prejudiced.² The court determined that the information about Rhinehart's mental health conditions, as a cause of reckless and impulsive behavior, would not have mitigated his responsibility for the

² The sentencing judge also heard and decided the postconviction motion.

possessory crimes which could not be characterized as reckless or impulsive decisions. The court concluded that even with the additional information, it would not have imposed anything less than the maximum sentences. The court acknowledged that a prison setting may not be conducive to trauma recovery, but concluded that the difficulties Rhinehart may experience in prison are outweighed by the need for punishment, deterrence, and protection of the community.

The no-merit report addresses the potential issues of whether Rhinehart's plea was knowingly, voluntarily, and intelligently entered and supported by a factual basis, whether the sentence was the result of an erroneous exercise of discretion, and whether the trial court erred in denying the postconviction motion for resentencing. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit, and this court will not discuss them further.

Our review of the record discloses no other potential meritorious issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Rhinehart further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Brian Mullins is relieved from further representing Timothy E. Rhinehart in these appeals. *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