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DISTRICT III

October 13, 2021

To:

Hon. Timothy A. Hinkfuss
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Daniel Goggin II
Electronic Notice

David L. Lasee
Electronic Notice

Elliott Gene Kyles 322850
McNaughton Corr. Center
8500 Rainbow Rd.
Lake Tomahawk, WI 54539-9558

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

2019AP419-CRNM State of Wisconsin v. Elliott Gene Kyles (L. C. No. 2015CF1801)

Before Stark, P.J., Hruz and Gill, 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).

Elliott Kyles appeals from a judgment convicting him of three drug offenses and possession of a firearm by a felon. Attorney Daniel Goggin II, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).¹ The no-merit report sets forth the procedural history of the case and addresses several suppression motion rulings, other pretrial motions for bond modification, the dismissal of two counts, and

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Kyles' pleas and sentences. Kyles has filed a response addressing each of these issues aside from his pleas, and additionally raising new claims related to jurisdiction, purported immunity as a "natural-born sovereign Moorish American," and the circuit court's refusal to appoint a seventh attorney for him. Goggin has filed a supplemental no-merit report discussing Kyles' additional arguments. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that counsel shall be allowed to withdraw and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Kyles with possession with intent to deliver heroin (≤ 3 g); possession with intent to deliver cocaine (> 1 -5g); possession with intent to deliver narcotics; and possession of a firearm by a felon. Each of the drug counts was charged as a second or subsequent offense, and a repeater penalty enhancer was alleged for all four counts.

Kyles was represented by a succession of five attorneys before waiving his right to counsel. The circuit court subsequently appointed a sixth attorney for Kyles after he changed his mind about proceeding pro se. However, the court refused to allow the sixth attorney to withdraw at Kyles' request or to appoint a seventh attorney for Kyles.² The sixth attorney raised the question of Kyles' competency. The court found Kyles competent to proceed following a hearing at which Kyles' attorney asserted that Kyles was incompetent due to his oppositional behavior and inability to assist with his defense. An expert witness, however, opined that Kyles had the mental capacity to understand the proceedings and the ability to assist in them, if he chose to do so.

² We do not count standby counsel in the number of Kyles' attorneys.

Throughout the pendency of the case, Kyles filed a series of motions, some by counsel and others pro se. Most significantly, Kyles claimed: (1) a law enforcement officer lacked sufficient evidence of Kyles' identity to arrest him on an outstanding warrant; (2) jail personnel conducted an illegal strip search of Kyles prior to his booking; (3) the circuit court imposed and refused to modify an excessive amount of bail; (4) the analysis of the seized substances did not satisfy reporting criteria; (5) there was no fingerprint or DNA evidence linking Kyles to the baggie of cocaine recovered from his pants; (6) the arresting officer gave false or inconsistent testimony at the suppression hearing; and (7) the court lacked jurisdiction over Kyles based on a variety of "sovereign citizen" theories. The court denied all of the motions shortly before the scheduled trial.

Following the denial of Kyles' pretrial motions, the parties reached a plea agreement. Kyles pled no contest to each of the charges in exchange for the dismissal of the second and subsequent offense and repeater enhancers. The circuit court accepted Kyles' pleas after conducting a plea colloquy and reviewing a signed plea questionnaire and waiver of rights form, with attached jury instructions. The court then proceeded to sentencing, at which the parties provided recommendations in accordance with the plea agreement, and Kyles exercised his right of allocution. After hearing from the parties, the court sentenced Kyles to five years' initial confinement and five years' extended supervision on the heroin count, concurrent terms of three years' initial confinement and three years' extended supervision on the cocaine and narcotics counts, and a consecutive term of five years' initial confinement and five years' extended supervision on the firearm count. The court explained the basis for the sentences with references to proper sentencing factors, including the gravity of the offenses, the need to protect the public, and the character of the offender.

We agree with counsel's description, analysis and conclusion that any challenge to the pleas, sentences, amount of bail, rulings on the suppression and dismissal motions, or sovereign citizen jurisdiction claims referenced above would lack arguable merit. Although not addressed by counsel, we further conclude that the circuit court's competency determination was supported by the record and that any other potential issues were waived by the valid pleas. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved of any further representation of Elliott Kyles in this matter pursuant to 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