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**DISTRICT III**

October 19, 2021

To:

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Timothy T. O'Connell  
Electronic Notice

Korey Brooks Bansemer 535260  
Winnebago Correctional Center  
P.O. Box 219  
Winnebago, WI 54985-0219

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

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2019AP973-CRNM      State of Wisconsin v. Korey Brooks Bansemer  
(L. C. No. 2017CF1299)

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).**

Korey Bansemer appeals from his convictions for a second and subsequent offense of possession with intent to deliver methamphetamine and eluding a traffic officer. Attorney Timothy T. O'Connell has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> The no-merit report sets forth the procedural history of the case and addresses Bansemer's no-contest pleas and sentences. Bansemer was advised of his

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

right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

The State charged Bansemer with possession with intent to deliver methamphetamine, as a second and subsequent offense; attempting to elude a traffic officer; possession of drug paraphernalia; and operating a motor vehicle after revocation—each as a repeat offender. Bansemer pled no contest to the first two counts. In exchange, the State moved to dismiss the repeater allegations and to dismiss and read in the other two counts. In addition, the State agreed to request a presentence investigation report (PSI) and to cap its sentencing recommendation at four years' initial confinement and four years' extended supervision unless the parties subsequently were to agree to a joint recommendation of concurrent sentences of three years' initial confinement and three years' extended supervision.

The circuit court accepted Bansemer's pleas after conducting a standard plea colloquy and reviewing a signed plea questionnaire and waiver of rights form, with attached jury instructions. Bansemer does not allege that he misunderstood any of the information provided to him about the charges or his rights. The court ordered a PSI, erroneously listing, however, Count 1 as possession of amphetamine instead of methamphetamine. The PSI replicated this apparent clerical error.

The circuit court held a sentencing hearing at which the prosecutor and court both referred to Count 1 as involving amphetamine, as stated in the PSI. Defense counsel correctly referred to Count 1 as involving methamphetamine, but counsel did not correct the PSI on the record. After hearing from the parties, the court discussed proper sentencing factors, including

the gravity of the offenses, the need to protect the public, and the character of the offender. Although the court initially referred to the possession-with-intent count “as it relates to the amphetamine,” it then spoke in more general terms about the impact drugs have in the community and it did not base Bansemer’s sentence on the particular drug involved. The court sentenced Bansemer to three years’ initial confinement and five years’ extended supervision on the drug charge and to a concurrent one year of initial confinement and two years’ extended supervision on the eluding charge.

We agree with counsel’s description, analysis and conclusion that any challenge to the pleas would lack arguable merit. Although counsel does not address it, we have considered whether Bansemer has grounds to appeal based upon the discrepancy between the charge as described in the Information and as described in the judgment of conviction. We note that amphetamine and methamphetamine fall under the same statutory provision, WIS. STAT. § 961.41(1m)(e)2., with the same maximum penalty. We conclude that the only remedy required is to amend the judgment to conform to the actual plea unambiguously offered by Bansemer and accepted by the circuit court. *See State v. Prihoda*, 2000 WI 123, ¶24, 239 Wis. 2d 244, 618 N.W.2d 857 (an unambiguous oral pronouncement on the record controls any conflict with the written judgment).

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*. Accordingly, counsel shall be allowed to withdraw, the judgment of conviction will be amended to conform to the record, and, as amended, the judgment will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

IT IS ORDERED that this order shall serve to amend the judgment to reflect that Count 1 is a conviction for possession with intent to deliver methamphetamine, as a second and subsequent offense. As amended, the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved of his obligation to further represent Korey Bansemer in this matter. *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*