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DISTRICT I

January 11, 2022

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

2021AP129-CRNM State of Wisconsin v. Paul Tyrone Fields (L.C. # 2019CF2614)

Before Donald, 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).

Paul Tyrone Fields appeals the judgment convicting him of possession of a firearm as a felon. His appellate counsel, Nicholas C. Zales, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20), and ***Anders v. California***, 386 U.S. 738 (1967).[1] Fields filed a response to the no-merit report. We have reviewed the no-merit report and the response, and we have independently reviewed the record as mandated by ***Anders***. We conclude that there is no

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

issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

On June 18, 2018, the State charged Fields with one count of being a felon in possession of a firearm. According to the facts in the record, Department of Corrections agents and Milwaukee police conducted a search of Fields's apartment after Fields's probation agent received a tip that Fields was storing a gun and drugs in his apartment. Law enforcement found a .380 caliber pistol in a jacket hanging on a coat rack in Fields's bedroom, nine millimeter bullets in a nearby duffle bag, mail addressed to Fields, and small quantities of cocaine and marijuana in a dresser. A DNA test revealed the presence of Field's DNA on the gun.

The matter proceeded to trial where Fields stipulated to his status as a felon. The jury found Fields guilty as charged. The trial court sentenced Fields to four years' initial confinement and three years' extended supervision, consecutive to any other sentence.

The no-merit report addresses whether law enforcement was required to have a search warrant prior to searching Fields's apartment, whether there was sufficient evidence for the guilty verdict, and whether the trial court properly exercised its sentencing discretion. The no-merit report thoroughly addresses each of these issues, providing citations to the record and relevant authority. This court is satisfied that the no-merit report properly analyzes the issues it raises, and based on our independent review of the record, we agree with counsel's assessment that none of those issues has arguable merit.

In his response, Fields raises several issues. As best as this court can discern, among Fields's arguments are his contentions that: (1) he had a right to know the identity of the person who provided his probation agent with the tip leading to the search of his apartment; (2) the trial

court erroneously exercised its sentencing discretion; (3) law enforcement did not have a search warrant; (4) the State lied at sentencing when it stated that it offered Fields a plea deal recommending four years' initial confinement and three years' extended supervision; and (5) trial counsel was ineffective for not confronting the State's alleged lie. Fields also maintains his innocence.

First, we note that Fields did not have the right to know who provided the tip to his probation agent. The identity of the tipster was irrelevant to Fields's case; rather, the issue at trial was whether Fields violated the conditions of his probation. There would be no arguable merit to this issue.

We have already concluded that counsel's no-merit report adequately addresses the issue of the trial court's sentencing discretion, and we do not discuss that issue further.

Fields also raises concerns about the search warrant issue; however, his complaint is unclear. During deliberations, the jury sent the court a written question: "Did they have a search warrant?" After discussing the question with trial counsel and the State, the court provided a signed written answer: "This was a legal question handled by the court previously and you should not consider it in deciding your verdict." Trial counsel stated that he would "not object[] to [the written answer sent to the jury], because … I don't want the jury to hear that it was a probationary search." In his response, Fields asks: "if it was a legal question by the courts then why was I not informed about the legal aspect and if they were discussing this without me?!" This court is unsure whether Fields complains of not being present when the jury submitted its question, or whether he complains of being unaware of any pretrial discussions as to the warrant. To the extent Fields complains of the former, we note that Fields was telephonically present and

his counsel was physically present in the courtroom. Fields did not raise any questions or comments at that time and was aware of the conversation taking place between the court, trial counsel, and the State. As to the latter, it is well-established law that probationary searches, such as the one at issue here, are not subject to search warrants. *See* ***State v. Anderson***, 2019 WI 97, ¶22, 389 Wis. 2d 106, 935 N.W.2d 285 (stating that a person on extended supervision for a felony is subject to a warrantless search of his or her residence "if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision"). Accordingly, there would be no arguable merit to any argument pertaining to a search warrant in this matter.

Finally, Fields contends that at the start of trial, the State offered him a plea deal recommending three years of incarceration and three years of extended supervision. At sentencing, the State told the trial court:

> Defense is indicating to me that on the day of trial, I made the offer to resolve it three in and three out. The initial offer that was made was in fact four in and three out. And given that that's the offer that was made, that's the offer that the [S]tate is going to use as its basis for making its recommendation with respect to the sentence today.

Nothing in the record suggests that the State recommended anything other than its stated offer. Moreover, Fields does not contend that he would have accepted an offer for three years' initial confinement and three years' extended supervision. Indeed, Fields still maintains his innocence. Finally, the trial court would not have been obligated to accept that offer had the State actually recommended it, *see* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Accordingly, there would be no arguable merit to a claim that the State was dishonest about its initial plea recommendation or that trial counsel failed to correct the State.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Fields. 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 Fields further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Nicholas C. Zales is relieved from further representing Paul Tyrone Fields in this appeal. *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