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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 I

April 5, 2022

To:

Hon. Lindsey Canonie Grady
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Christopher P. August
Assistant State Public Defender
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
Electronic Notice

Kalsey Casmar Williams
6408 N. 91st Street, #9
Milwaukee, WI
53224

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

2020AP717-CRNM	State of Wisconsin v. Kalsey Casmar Williams (L.C. # 2016CF5453)
2020AP718-CRNM	State of Wisconsin v. Kalsey Casmar Williams (L.C. # 2017CF3117)
2020AP719-CRNM	State of Wisconsin v. Kalsey Casmar Williams (L.C. # 2019CF254)

Before Brash, C.J., Donald, P.J., and White, J.

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).

In these consolidated appeals, Kalsey Casmar Williams appeals from judgments convicting him of the following crimes: possession with intent to deliver cocaine (more than one gram but less than five grams) as a party to the crime and possession of narcotic drugs (oxycodone) (Milwaukee County Circuit Court Case No. 2016CF5453); possession of a firearm as a convicted felon and possession of tetrahydrocannabinols as a second and subsequent offense

(Milwaukee County Circuit Court Case No. 2017CF3117); and possession with intent to deliver cocaine (more than five grams but less than fifteen grams) (Milwaukee County Circuit Court Case No. 2019CF254). Appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and *Anders v. California*, 386 U.S. 738 (1967).¹ Williams received a copy of the report, was advised of his right to file a response, and has elected not to do so. We have independently reviewed the records and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

Milwaukee County Circuit Court Case No. 2016CF5453

In this case, Williams initially was charged with possession with intent to deliver cocaine (more than five grams but less than fifteen grams) as a party to a crime and possession of narcotic drugs. The complaint alleged that on December 4, 2016, while on patrol, police officers observed a parked vehicle. They saw a person, later identified as Williams, slumped over in the front passenger seat. When one of the officers got closer, he noticed two clear plastic baggies containing suspected cocaine base in the passenger side door handle, next to Williams.

When the officer opened the passenger door, Williams woke up. Officers searched Williams and recovered two pills, which they subsequently identified as oxycodone. According

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

The no-merit report was filed by Attorney Jorge R. Fragoso. On April 19, 2021, Attorney Christopher P. August was substituted as counsel for Williams and now represents Williams in these appeals.

to the complaint, in a *Mirandized* statement, Williams told the investigating officer that he took the pills for back pain, but that he did not have a prescription.²

The suspected cocaine base tested positive for cocaine. In an amended information, the charge of possession with intent to deliver cocaine was reduced to more than one gram but less than five grams.

Milwaukee County Circuit Court Case No. 2017CF3117

While released on bail in Case No. 2016CF5453, Williams was charged in this case with possession of a firearm by a felon and possession of tetrahydrocannabinols (second and subsequent offense). The complaint alleged that while on patrol in a marked squad car, police officers observed Williams standing on the porch of a residence. The complaint further alleged that Williams made eye contact with the officers, appeared to be startled, and immediately sat down, partially concealing himself behind bushes. The officers, who had their windows down, could smell the odor of marijuana coming from the area. They exited their vehicle and walked toward Williams, who fled. As Williams ran, he held his left hand over his pocket. Eventually, he was placed in handcuffs. During a search, the officers found a bag of marijuana and a revolver in Williams' pockets.

Williams subsequently filed a suppression motion, arguing that the revolver and marijuana were recovered following an unlawful search and seizure. Williams claimed that the

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

officers' show of force when he was on the porch amounted to a seizure and that the officers lacked reasonable suspicion.

During the hearing that followed, the circuit court heard testimony from Williams and from one of the officers who approached Williams on the porch.³ The circuit court also reviewed the video from the officer's body camera.

The circuit court made the following findings. First, the circuit court explained that it found both Williams and the officer who testified to be credible. The circuit court specifically found that the officer reasonably believed that Williams was attempting to conceal himself on the porch. Next, the circuit court found that the officer stopped his squad car without activating the lights or siren, exited the car, and walked toward Williams, who was seated on the front stoop of a house. At that point, the officer asked Williams if he was smoking weed, Williams responded, and the officer continued to walk toward him. Around this time, other officers had exited their squad cars as well. Moments later, Williams fled. Williams ultimately tripped and was arrested.

Based on these findings, the circuit court concluded that when the officer stopped the squad car and approached Williams, no seizure had occurred. The circuit court held that the encounter remained consensual even after the other officers exited their squad cars and that Williams was not seized until he was physically restrained after he tripped while running from the police. The circuit court denied Williams' suppression motion.

³ The Honorable Mark A. Sanders presided over the suppression hearing.

Milwaukee County Circuit Court Case No. 2019CF254

While released on bail in the two cases previously discussed, Williams was charged in this case with possession with intent to deliver cocaine (more than five grams but less than fifteen grams). According to the complaint, an officer entered a gas station and observed Williams standing at the register with what appeared to be a marijuana cigarette behind his ear. Upon observing the police officer, Williams immediately attempted to conceal the cigarette under his jacket and exited the store. When the officer made contact with Williams outside of the store, Williams attempted to hand over the cigarette.

A search of Williams followed, and officers recovered two bags of suspected cocaine and three cell phones from Williams' pockets. They also recovered a bag of cocaine on the ground near Williams' foot. The substances in the bags tested positive for cocaine and fentanyl.

Plea and Sentencing Hearings

Williams resolved all three cases during one plea hearing. In exchange for a plea of guilty on all counts, the State and the defense agreed to a joint sentencing recommendation of four years of initial confinement and four years of extended supervision. The circuit court accepted Williams' pleas and ordered him to serve sentences totaling four years of initial confinement and five years of extended supervision, with eligibility for the substance abuse program. The circuit court additionally granted him 230 days of sentence credit.

The no-merit report addresses the circuit court's ruling on Williams' suppression motion, whether Williams' pleas were knowingly, intelligently, and voluntarily entered, and the circuit court's exercise of its sentencing discretion. The record supports the circuit court's finding that

for purposes of the Fourth Amendment, Williams was not seized on the steps of the porch, and its denial of Williams’ suppression motion. *See Florida v. Bostick*, 501 U.S. 429, 434-35 (1991) (Law enforcement officers may approach citizens on the street and ask questions without implicating the Fourth Amendment “as long as the police do not convey a message that compliance with their requests is required.”). In addition, the plea colloquies, when augmented by the plea questionnaire and waiver of rights forms, the addendums, and the applicable jury instructions,⁴ demonstrate Williams’ understanding of the information he was entitled to and that his pleas were knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The record further reveals that the circuit court considered and applied the relevant sentencing factors. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit.

⁴ During the colloquy, the circuit court properly explained the crime of possession of narcotic drugs, oxycodone, and the penalties associated with that crime. *See* WIS. STAT. § 961.41(3g)(am) (2015-16). The jury instruction specific to that statute is WIS JI—CRIMINAL 6030. Here, however, WIS JI—CRIMINAL 6112 was filed in connection with the plea questionnaire and waiver of rights of rights form. That instruction relates to possession of a prescription drug without a valid prescription, *see* WIS. STAT. § 450.11(7)(h).

Despite the error, the circuit court told Williams that the State would have to prove Williams possessed a substance, the substance was a controlled substance—namely, oxycodone—and that Williams knew or believed that the substance was oxycodone. The circuit court’s advisement in this regard tracked WIS JI—CRIMINAL 6030, and Williams confirmed that he understood. This court concludes there would be no arguable merit to a claim that Williams did not understand the nature of the charge against him in this regard.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved of further representation of Kalsey Casmar Williams in these matters. *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