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DISTRICT III

June 1, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Eau Claire County Courthouse
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Miquel D. Brown 319816
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You are hereby notified that the Court has entered the following opinion and order:

2019AP2153-CRNM State of Wisconsin v. Miquel D. Brown
2019AP2154-CRNM (L. C. Nos. 2017CF294, 2017CF295)

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).

Miquel Brown appeals from multiple felony convictions entered in two cases. Attorney Melissa Petersen 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 cases, addresses a suppression motion ruling, and discusses the validity of Brown's pleas and sentences. Brown has filed a response raising multiple claims of ineffective assistance of counsel, as well as a series of related challenges regarding the timing of a substitution of counsel

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

in relation to the preliminary hearing, the sufficiency of the complaints, a plea withdrawal motion, and sentence credit. Petersen has filed a supplement to her no-merit report addressing Brown's issues. Having independently reviewed the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744 (1967), in addition to the submissions of Petersen and Brown, we conclude there are no arguably meritorious issues for appeal.

The State charged Brown in Eau Claire County case No. 2017CF294 with two counts of second and subsequent offense of conspiracy to deliver methamphetamine and two counts of misdemeanor bail jumping—each as a repeat offender. On the same day, the State also charged Brown in Eau Claire County case No. 2017CF295 with two counts of second and subsequent offense of delivering heroin, one count of identity theft, two counts of battery to a law enforcement officer, one count of second and subsequent offense of possession of heroin with intent to deliver, one count of possession of methamphetamine, one count of second and subsequent offense of possession of THC, one count of possession of drug paraphernalia, and one count of resisting an officer—each as a repeat offender.

Brown orally moved to dismiss the criminal complaints prior to the joint preliminary hearing, which was adjourned because Brown's first attorney left the Office of the State Public Defender (SPD). At the beginning of the adjourned preliminary hearing, Attorney Francis Rivard advised the circuit court that the SPD had appointed him to replace Brown's second attorney, John Bachman, in response to Brown's request for a new attorney. The court allowed Bachman to withdraw and Rivard to substitute as Brown's third attorney. Rivard immediately moved for a continuance in order to evaluate the challenge Brown wished to raise regarding the sufficiency of the complaints and to prepare for the preliminary hearing. Instead, the court—on its own motion—reversed its decision allowing Bachman to withdraw and proceeded to hold the

preliminary hearing with Bachman representing Brown—without addressing any challenge to the complaints. After the court found sufficient evidence to support bindover, the court again relieved Bachman of further representation of Brown and allowed Rivard to substitute as counsel. The court subsequently allowed Rivard to withdraw as counsel and Attorney Robert Thorson to serve as Brown's fourth attorney.

With Thorson as counsel, Brown filed three motions to dismiss case No. 2017CF294. The first motion alleged that the complaint was deficient; the second challenged the sufficiency of the evidence to support bindover; and the third complained that co-conspirators had not been charged on the conspiracy counts. Brown also moved to dismiss case No. 2017CF295 based on the circuit court's refusal to allow Rivard to represent Brown at the preliminary hearing or to grant Rivard's request for additional time to challenge the complaint and to prepare for the preliminary hearing, and he also alleged jurisdictional problems arising from the sequence of events. The court ultimately denied all of Brown's motions to dismiss.

Brown also filed a motion in case No. 2017CF295 to suppress evidence seized during a traffic stop, alleging that the officer who pulled him over had no reasonable suspicion to do so. At the suppression hearing, Aaron Ranallo—who was a drug task force investigator for the Eau Claire County Sheriff's Office—testified about how a confidential informant (CI) was used to execute a controlled buy of heroin from Brown. Ranallo arranged for the CI to make a second controlled buy from Brown in a parking lot, alerted Patrol Officer Olivia Erl about the anticipated controlled buy, and also told Erl that there were arrest warrants and a probation apprehension request out for Brown. Ranallo observed the CI enter a vehicle in the designated parking lot and listened to a wired conversation between the CI and Brown that ended with the CI thanking Brown. Ranallo relayed to Erl that the second controlled buy had been completed

and described the vehicle. Erl followed the vehicle, observed that it had an expired license plate, and pulled the vehicle over. Erl confirmed that Brown was a passenger in the vehicle and that he had two outstanding arrest warrants, and she then arrested him. The circuit court concluded that the information conveyed from Ranallo to Erl provided reasonable suspicion for the traffic stop, and it denied the suppression motion.

Brown subsequently pleaded no contest in case No. 2017CF294 to one count of conspiracy to deliver methamphetamine, as a repeat offender. In case No. 2017CF295, Brown pleaded no contest to one count of delivery of less than three grams of heroin as a second or subsequent offense, one count of battery to a law enforcement officer, and one count of possession of less than three grams of heroin with intent to deliver—each as a repeat offender. In exchange, the State agreed to recommend probation with a stayed sentence in case No. 2017CF294, to cap its combined sentencing recommendation to eight years' initial confinement (with the parties free to argue on extended supervision) in case No. 2017CF295, and to dismiss and read in the remaining charges in both cases. The circuit court accepted Brown's pleas after conducting a plea colloquy and accepting signed plea questionnaire and waiver of rights forms, with attached jury instructions, for each case.

Prior to sentencing, Brown moved to withdraw his no-contest pleas and replace them with ***Alford*** pleas.[2] The circuit court concluded that Brown had failed to state any adequate grounds for the motion and therefore denied it.

[2] *See* ***North Carolina v. Alford***, 400 U.S. 25 (1970).

The circuit court held a sentencing hearing at which the parties addressed the presentence investigation report and provided recommendations in accordance with the plea agreement, and Brown was afforded his right of allocution. After hearing from the parties, the court discussed proper sentencing factors, including the gravity of the offenses, the character of the offender, and sentencing objectives, including Brown's rehabilitative needs, the need to protect the public, the need for punishment, and the need for deterrence. The court then sentenced Brown to seven years' initial confinement followed by three years' extended supervision on the battery count, with concurrent terms of five years' initial confinement followed by five years' extended supervision on each of the heroin counts. The court also imposed and stayed a consecutive sentence of six years' initial confinement followed by five years' extended supervision on the methamphetamine count, subject to a five-year term of probation.

We agree with counsel's description, analysis, and conclusion that any challenge to the suppression ruling, pleas (including Brown's motion to withdraw his no-contest pleas and replace them with ***Alford*** pleas), or sentences would lack arguable merit. We further conclude that, by entering his pleas, Brown waived any challenge to the sufficiency of the complaints, the bindover, the substitution of counsel, the circuit court's jurisdiction, or counsel's performance relating to any of those issues. *See* ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Our independent review of the records 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, and the judgments of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Melissa Petersen is relieved of any further representation of Miquel Brown in these matters 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