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DISTRICT II

July 27, 2022

To:

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Circuit Court Judge
Electronic Notice

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
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Ronald J. Niderleidner, #390130
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1816-CRNM	State of Wisconsin v. Ronald J. Niderleidner (L.C. #2019CF393)
2021AP1817-CRNM	State of Wisconsin v. Ronald J. Niderleidner (L.C. #2019CF437)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Ronald J. Niderleidner appeals judgments of conviction for multiple counts of delivering three or less grams of heroin and a single count of maintaining a drug-trafficking place. Niderleidner's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Niderleidner has filed a response challenging the adequacy of his appellate counsel's review, and appellate counsel has

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

filed a supplemental no-merit report addressing the response. Upon consideration of the no-merit report, Niderleidner's response, and the supplemental no-merit report, and following an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgments. *See* WIS. STAT. RULE 809.21(1).

Niderleidner was charged in two Racine County cases with a total of fourteen drug offenses that occurred between October 18, 2018 and March 27, 2019. In Racine County case No. 2019CF437, he was charged with five counts of delivering three grams or less of heroin near a school² and five counts of maintaining a drug-trafficking place³ between October 18, 2018, and February 20, 2019, with all of the offenses subject to a penalty modifier for a second or subsequent offense.⁴ In Racine County case No. 2019CF393, Niderleidner was charged with two counts of delivering three grams or less of heroin near a school (on February 21 and March 27, 2019) as well as one count of possession of narcotic drugs⁵ and one count of maintaining a drug-trafficking place, again with all offenses subject to the second or subsequent offense penalty modifier. The charges arose from numerous controlled buys by police using a confidential informant at Niderleidner's residence across the street from Jefferson Lighthouse Elementary

² *See* WIS. STAT. §§ 961.41(1)(d)1 (class F felony); 961.49(1m)(b)6 (increasing maximum term of imprisonment by up to five years for heroin delivery within 1,000 feet of a school). As to the offense alleged to have occurred on February 5, 2019, Niderleidner was alleged to have party-to-a-crime liability pursuant to WIS. STAT. § 939.05.

³ *See* WIS. STAT. § 961.42(1) (class I felony).

⁴ *See* WIS. STAT. § 961.48(1)(b) (increasing maximum term of imprisonment by up to four years for felony classifications E through I).

⁵ *See* WIS. STAT. § 961.41(3g)(am) (class I felony).

School, culminating in the execution of a search warrant at the residence on March 27, 2019, during which police found additional drugs and drug paraphernalia.

Niderleidner reached a plea agreement with the State resolving both cases. In case No. 2019CF437, he pled guilty to counts one, three, and five—all for delivering no more than three grams of heroin. In case No. 2019CF393, he pled guilty to counts one and four, which were for delivering no more than three grams of heroin and maintaining a drug-trafficking place, respectively. The State agreed to strike the penalty enhancers from the counts to which Niderleidner was pleading guilty, and the remaining charges were dismissed and read in for purposes of sentencing. Finally, the State agreed to cap its total sentencing recommendation to ten years' initial confinement and ten years' extended supervision.

Following a thorough colloquy, the circuit court accepted Niderleidner's guilty pleas and ordered a presentence investigation report. At sentencing, in case No. 2019CF393, the court imposed a total sentence of thirteen years' imprisonment, consisting of five years' each of initial confinement and extended supervision on the delivery charge and a consecutive sentence of one year's initial confinement and two years' extended supervision for maintaining a drug-trafficking place. In case No. 2019CF437, the court ordered probation for each delivery offense, with imposed and stayed eight-year sentences (three years' initial confinement and five years' extended supervision) on counts one and three and an imposed and stayed ten-year sentence (five years' initial confinement and five years' extended supervision) on count five. The sentences in case No. 2019CF437 were made consecutive to the sentences in case No. 2019CF393 and to one another, except that the ten-year sentence on count five was made concurrent to the other case No. 2019CF437 sentences.

The no-merit report addresses whether Niderleidner's pleas were knowing, intelligent, and voluntary; the sufficiency of the circuit court's plea colloquy; and whether the circuit court erroneously exercised its sentencing discretion. Our review of the record satisfies us that the no-merit report thoroughly analyzes these matters as being without arguable merit. Our independent review of the record discloses no other potential issue for appeal.

Niderleidner's response raises several issues relating generally to the adequacy of appellate counsel's review of the record to conclude that appeals would have no arguable merit. First, Niderleidner raises concerns about appointed counsel's acknowledgment that the search warrant and its supporting affidavit are not in the appellate record. As counsel notes, review of a motion to suppress is not subject to the guilty-plea-waiver rule, *see* WIS. STAT. § 971.31(10); therefore any potential deficiency in the warrant here might give rise to an ineffective-assistance-of-counsel claim based on trial counsel's failure to raise it.

Nonetheless, it is undisputed that the search was executed pursuant to an authorized warrant, and we accord great deference to the warrant-issuing judge's determination of probable cause. *See State v. Romero*, 2009 WI 32, ¶18, 317 Wis. 2d 12, 765 N.W.2d 756. The criminal complaints set forth the considerable investigative efforts that preceded the eventual search on March 27, 2019, including police surveillance and a handful of controlled buys from the residence over the course of several months, suggesting there was ample probable cause to believe that narcotics would be found at that location. Niderleidner's response provides no reason to believe that the warrant affidavit was lacking, that authorities exceeded the warrant's

scope, or that the warrant was facially deficient so as to render any reliance upon it unreasonable.⁶

Niderleidner also argues appointed counsel could not properly conclude that any appeal would be without arguable merit because he failed to review all the discovery available in Niderleidner's cases. Appellate counsel filed a motion to compel in the circuit court, seeking trial counsel's electronic files relating to Niderleidner. Trial counsel subsequently provided appellate counsel with some paper discovery but informed him that some paper and electronic discovery in Niderleidner's cases was unavailable as it had been damaged by fire-fighting efforts during the civil unrest following the Jacob Blake shooting in Kenosha.

Appellate counsel represents that Niderleidner was provided with all paper discovery available, and the missing electronic discovery involved events that Niderleidner allegedly participated in and that were discussed in the paper police reports. Given Niderleidner's guilty pleas, the issues that he could raise at this juncture are significantly circumscribed. *See State v. Keltly*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (noting the guilty-plea-waiver rule waives all nonjurisdictional defects, including constitutional claims). We agree with appellate counsel's assessment that Niderleidner fails to provide any reason to believe any missing electronic discovery would have affected the validity of his pleas, which were supported by Plea Questionnaire/Waiver of Rights forms and an extensive circuit court colloquy.

⁶ Moreover, at the plea hearing, trial counsel responded affirmatively when asked whether she had considered and discussed any potential pretrial motions with Niderleidner, suggesting she too saw no meritorious basis for seeking to suppress the fruits of the search. We further note that Niderleidner fails to substantiate his concerns about the search warrant despite appointed counsel's representation that Niderleidner was provided with the paper discovery available from his cases.

Finally, Niderleidner states that “unsupported charges resulted in improper read-ins which erroneously escalated the sentence imposed.” Our review of the appellate record fails to substantiate this assertion. The offenses were alleged to have occurred on a variety of dates at the same location, using a confidential informant that on most occasions purchased directly from Niderleidner. The search of Niderleidner’s residence on March 27, 2019, was undertaken pursuant to a search warrant, and the criminal complaint in case No. 2019CF393 describes in detail how the search occurred and what was found. Contrary to Niderleidner’s argument, nothing suggests that trial counsel would have had a meritorious basis for filing dismissal or suppression motions on the read-in charges.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved from further representing Ronald J. Niderleidner in these appeals. *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