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DISTRICT III

August 16, 2022

To:

Hon. Mitchell J. Metropulos
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Mark A. Schoenfeldt
Electronic Notice

Leslie A. Brown 551532
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2020AP842-CRNM State of Wisconsin v. Leslie A. Brown (L. C. No. 2017CF112)

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).

Leslie Brown appeals from a judgment convicting him of first-degree reckless homicide by delivery of drugs. Attorney Mark Schoenfeldt 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 case and addresses Brown's plea, his sentence, and his trial counsel's general performance. Brown filed a response challenging more specific aspects of his trial counsel's performance, and Schoenfeldt filed a supplemental no-merit report addressing Brown's

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

allegations. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), in addition to the parties' submissions, we conclude there are no arguably meritorious issues for appeal.

The State charged Brown in an amended criminal complaint with one count of first-degree reckless homicide as a repeat offender, one count of delivery of a Schedule I or II narcotic as a second or subsequent offense, and two counts of second-degree reckless injury as a repeat offender. The charges were based upon allegations that Brown sold heroin laced with fentanyl to several people who overdosed on it, one of whom died.

As part of a plea agreement, Brown agreed to enter a plea of no contest to the first-degree reckless homicide charge. In exchange, the State agreed that: the circuit court could dismiss and read in the remaining counts and the respective sentence enhancers; the State would not file, but the court would read in, four additional uncharged counts related to Brown's drug trafficking; and the State would recommend a sentence of fourteen to sixteen years' initial confinement followed by twelve to fourteen years' extended supervision, to be served concurrent to any other sentence Brown was already serving. The court accepted Brown's plea after conducting a plea colloquy, reviewing a signed plea questionnaire, and obtaining the parties' agreement that the amended complaint provided a factual basis for the charge.

The circuit court subsequently held a sentencing hearing at which it heard from the attorneys, Brown, and two of the homicide victim's family members. The court discussed the gravity of the offense (which the court deemed aggravated by the fact that Brown continued selling a particularly dangerous batch of drugs after he knew people had been overdosing) and Brown's character (which the court acknowledged was affected by significant childhood

trauma). The court identified its primary sentencing objective in this case as the need to protect the public by removing Brown from the public long enough for him to reduce his risk of recidivism through treatment and maturity. The court also expressed its view that the sentence should be commensurate with the severity of a homicide to serve a deterrent effect. The court then sentenced Brown to fifteen years' initial confinement followed by ten years' extended supervision.

We agree with counsel's description, analysis and conclusion that any challenge to the plea colloquy or sentences would lack arguable merit. We also note that Brown himself does not allege any defect in the plea colloquy, any misunderstanding of the nature of the charges or constitutional rights he was waiving, or any illegality or erroneous use of discretion related to his sentence.

We turn to Brown's claim that his trial attorney, Alan Tarnowski, afforded him ineffective assistance of counsel. Brown asserts that Tarnowski "misinformed" Brown that "he would be found guilty of delivering the substance that caused the death" of the victim the day before she overdosed, despite evidence that the victim had made that purchase on behalf of a third party. However, counsel's advice was sound given the State's theory that the victim had kept some of the drugs she bought from Brown for her own use. The heroin/fentanyl blend found near the victim matched the consistency of that found in a search of Brown's home, and there was no evidence that the victim had recently purchased drugs from anyone other than Brown.

Our independent review of the record discloses no other potential issues for appeal.² 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 judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Mark Schoenfeldt is relieved of any further representation of Leslie Brown in this matter 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

² We note that Brown's pleas forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *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.