



OFFICE OF THE CLERK
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 III

August 30, 2022

To:

Hon. Rian Radtke
Circuit Court Judge
Electronic Notice

Michelle Weisenberger
Clerk of Circuit Court
Trempealeau County Courthouse
Electronic Notice

Roberta A. Heckes
Electronic Notice

John Harrison Sacia
Trempealeau Co. D. A. Office
P.O. Box 67
Whitehall, WI 54773

Timothy Lee Coleman 493580
Dane County Jail
115 W. Doty St.
Madison, WI 53703

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

2022AP1001-CRNM State of Wisconsin v. Timothy Lee Coleman
(L. C. No. 2021CF96)

Before Stark, P.J.¹

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).

Counsel for Timothy Coleman has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge Coleman's convictions for obstructing an officer and disorderly conduct, both counts as a repeater. Coleman has filed a response to the no-merit report, and appellate counsel has filed a supplemental no-merit report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

(1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State filed a criminal complaint charging Coleman with three counts of felony bail jumping, one count of obstructing an officer, and one count of disorderly conduct, all counts as a repeater. According to the complaint, while at a gas station, Coleman exited a truck while holding a beer bottle in his hand and began “yelling and screaming” at a man and a minor child. When police responded to the gas station, Coleman was inside the cab of the truck, and an officer observed two open bottles of beer in the truck’s cupholders. The officer repeatedly ordered Coleman to exit the truck, but Coleman refused to do so and became belligerent. Among other things, Coleman yelled at the officers for “several minutes,” including telling one officer that she “better shoot.” After about fifteen minutes, Coleman finally exited the truck. However, he was “aggressively noncompliant” during a subsequent search incident to arrest. He also refused to comply with booking procedures after he was transported to the Trempealeau County Jail.

The complaint alleged that on the date these events occurred, Coleman had been released from custody on bond in two felony cases in Dane County, and the conditions of his release in those cases prohibited him from committing any new crimes. With respect to the repeater enhancer, the complaint alleged that Coleman had been convicted of a felony in an Eau Claire County case on October 2, 2020, which conviction remained of record and unreversed.

Coleman was disruptive during both his bond hearing and his initial appearance, including by continuously interrupting others and repeatedly using profanity, even after the circuit court instructed him not to do so. During the initial appearance, Coleman’s attorney

raised the issue of Coleman's competency, noting that a competency evaluation had been ordered in a pending Dane County case. After finding that the complaint set forth probable cause for the crimes charged, the court ordered a competency evaluation, based on Coleman's behavior in court and the fact that his competency had been challenged in another county.

A competency evaluation was subsequently performed, and the examiner concluded that Coleman was competent to proceed. During a hearing in August 2021, Coleman informed the circuit court that he wanted to challenge the examiner's conclusion regarding competency. During a subsequent hearing in October 2021, however, Coleman stated that he was no longer contesting the examiner's determination that he was competent to proceed. The court then conducted a colloquy with Coleman, during which Coleman confirmed that he understood he had the right to challenge the examiner's conclusion regarding competency; that no one had made any threats or promises to induce him to waive that right; and that he had enough time to speak to his attorney about his decision. The court then accepted Coleman's waiver of his right to challenge the examiner's determination. The court further found, based on the examiner's report, that Coleman was competent to proceed.

Defense counsel then informed the circuit court that Coleman intended to waive his preliminary hearing and enter no-contest pleas to the charges of obstructing an officer and disorderly conduct, both as a repeater. In exchange for Coleman's pleas to those charges, the State would recommend that the three felony bail jumping charges be dismissed and read in. In addition, the parties would jointly recommend that the court impose concurrent sentences of six months in jail on the obstructing an officer and disorderly conduct charges.

Following a colloquy with Coleman, supplemented by a preliminary hearing waiver form that Coleman had signed, the circuit court determined that Coleman had knowingly, voluntarily, and intelligently waived his right to a preliminary hearing. The court further found that there was probable cause to believe that a felony had been committed and that Coleman probably committed it, and it bound Coleman over for trial.

The circuit court then conducted a plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Coleman had completed. Following the plea colloquy, the court accepted Coleman's no-contest pleas, finding that they were knowingly, intelligently, and voluntarily made. The court also found that the complaint set forth an adequate factual basis for Coleman's pleas. The court then proceeded directly to sentencing. After both attorneys made their sentencing arguments and Coleman exercised his right of allocution, the court followed the joint recommendation and imposed concurrent sentences of six months in jail on both counts.

The no-merit report addresses whether Coleman's no-contest pleas were knowing, intelligent, and voluntary; whether an adequate factual basis existed for Coleman's pleas; whether Coleman's trial attorney was constitutionally ineffective; and whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further. We also conclude that there would be no arguable grounds to challenge the court's finding that Coleman was competent to proceed, given the examiner's determination that Coleman was competent and Coleman's valid waiver of his right to contest that determination.

In his response to the no-merit report, Coleman asserts that shortly after he was sentenced in this case, he was revoked from supervision in a different case and was sent to prison. As a

result, Coleman served his jail sentences in this case in prison. Because Coleman was in prison, he did not receive “good time” credit against his sentences in this case. Because he did not receive “good time” credit, Coleman asserts that he served more time in this case than the law permitted, and he should therefore “be compensated for [his] extended stay against law.” (Capitalization omitted.)

This claim lacks arguable merit. WISCONSIN STAT. § 302.43 provides that every “inmate of a county jail” is eligible to earn “good time” credit in the amount of one-fourth of his or her term of confinement. “Section 302.43 is clear on its face and applies to only inmates of a county jail.” *State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶14, 258 Wis. 2d 270, 653 N.W.2d 160. Here, because Coleman was revoked from supervision and was sent to prison to serve a sentence in a separate case, he was required to serve his jail sentences in the instant case in prison. *See* WIS. STAT. § 973.03(2) (“A defendant sentenced to the Wisconsin state prisons and to a county jail or house of correction for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.”).

Under the plain language of WIS. STAT. § 302.43, because Coleman served his jail sentences in prison, and not while he was an “inmate of a county jail,” he was not eligible to earn “good time” credit. Accordingly, any claim that Coleman was impermissibly held in excess of his sentences in this case because he did not receive “good time” credit would lack arguable merit. Furthermore, as appellate counsel notes in the supplemental no-merit report, Coleman’s argument regarding “good time” credit does not create a potential basis for appeal because Coleman has finished serving the six-month sentences imposed in this case. *See, e.g., State v. Walker*, 2008 WI 34, ¶14, 308 Wis. 2d 666, 747 N.W.2d 673 (holding that a defendant’s challenge to his term of reconfinement was moot because he had finished serving the

reconfinement term); *State v. Anderson*, 2015 WI App 92, ¶8, 366 Wis. 2d 147, 873 N.W.2d 82 (noting that a defendant's claim for sentence adjustment was moot because he had been released from confinement and therefore would not benefit from a decision in his favor).

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Roberta Heckes is relieved of her obligation to further represent Timothy Coleman in this matter. *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