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DISTRICT III

October 18, 2022

To:

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Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
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Khamkhitt Patrick Keomanyvong 615480
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You are hereby notified that the Court has entered the following opinion and order:

2022AP371-CRNM State of Wisconsin v. Khamkhitt Patrick Keomanyvong
(L. C. No. 2020CF1905)

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).

Counsel for Khamkhitt Keomanyvong has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Keomanyvong's convictions for four criminal offenses, each as a repeater. Keomanyvong was advised of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude

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

that 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.

A criminal complaint charged Keomanyvong with the following twelve offenses, each as a repeater: three counts of delivery of Schedule I or II narcotics, as a second and subsequent offense; four counts of felony bail jumping; two counts of neglecting a child (harm did not occur and the child was under six years of age); possession with intent to deliver narcotics, as a second and subsequent offense; possession of tetrahydrocannabinols (THC), as a second and subsequent offense; and maintaining a drug trafficking place, as a second and subsequent offense. The complaint alleged that a confidential informant arranged to purchase heroin from Keomanyvong during three separate controlled buys on November 19, 23 and 24, 2020. In each instance, the confidential informant gave Keomanyvong money in exchange for a plastic bag containing a white substance. The substance in each bag field tested positive for fentanyl. The complaint alleged that each of the controlled buys took place in Keomanyvong's vehicle and that Keomanyvong's two minor children were present in the vehicle during the November 23 controlled buy.

The complaint further alleged that on December 1, 2020, the confidential informant again arranged to purchase heroin from Keomanyvong. The confidential informant told police that he believed Keomanyvong had the heroin with him and was on his way to the arranged location for the purchase. Police then conducted a traffic stop of Keomanyvong's vehicle. Keomanyvong was taken into custody, and during a search of his person police discovered a bag containing green plant material, which field tested positive for THC. During a search of Keomanyvong's vehicle, police discovered a cup containing a white, powdery substance, which field tested positive for fentanyl.

Police later conducted a search of Keomanyvong's apartment, pursuant to a search warrant. During the search, officers observed one of Keomanyvong's two minor children in the apartment's living room and the other minor child in a bedroom. The officers discovered a green plant material, which field tested positive for THC, on a tray in the bedroom next to a child's bed, in a location that the children could reach. Police interviewed the mother of Keomanyvong's children, who admitted that Keomanyvong smoked marijuana in the apartment and dealt drugs while the children were in his vehicle.

The complaint further alleged that Keomanyvong had been charged with a felony in Brown County case No. 2019CF1759 and was released on bond in that case at the time he committed the offenses at issue here. The complaint also alleged that Keomanyvong had previously been convicted of possession with intent to deliver heroin in February 2017 and had been convicted of possession of THC (second and subsequent offense) in September 2014, both of which convictions remained of record and unreversed.

The parties ultimately reached a plea agreement. Pursuant to the agreement, Keomanyvong entered no-contest pleas to two counts of delivery of Schedule I or II narcotics, as a second and subsequent offense and as a repeater; one count of felony bail jumping, as a repeater; and one count of neglecting a child (harm did not occur and the child was under six years of age), as a repeater. In exchange for Keomanyvong's pleas, the State recommended that the remaining charges be dismissed and read in, with the exception of Count 9 (possession with intent to deliver narcotics, as a second and subsequent offense and as a repeater), which would be dismissed outright. The State also recommended that the court dismiss and read in the single count charged in Brown County case No. 2019CF1759.

The circuit court conducted a plea colloquy, supplemented by a plea questionnaire and waiver of rights form.² Following the plea colloquy, the court accepted Keomanyvong's pleas, finding that they were freely, voluntarily, intelligently and knowingly entered. Keomanyvong agreed that the criminal complaint contained sufficient facts to support his no-contest pleas, and the court found that an adequate factual basis for the pleas existed.

At sentencing, the State recommended that the circuit court impose sentences totaling eight years of initial confinement followed by seven years of extended supervision. The defense, in turn, recommended four years of initial confinement followed by whatever period of extended supervision the court believed to be appropriate. Keomanyvong exercised his right of allocution. After considering the gravity of the offenses, the need to protect the public, Keomanyvong's criminal history, and various aggravating factors, the court imposed sentences totaling eight years of initial confinement followed by four years of extended supervision. The court granted Keomanyvong's request for 325 days of sentence credit.

The no-merit report addresses whether Keomanyvong's no-contest pleas were knowing, intelligent and voluntary 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. The entry of a valid no-contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional

² Keomanyvong did not personally sign the plea questionnaire and waiver of rights form. Instead, the form's signature block includes the following notation: "[S]igned on client's behalf [with] permission)." During the plea hearing, Keomanyvong confirmed that he had reviewed the form with his attorney over the phone and that he gave his attorney permission to sign the form on his behalf.

violations that occurred before the plea was entered.³ See *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

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 Leonard Kachinsky is relieved of further representing Khamkhitt Keomanyvong 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

³ A valid no-contest plea does not waive a defendant's ability to seek appellate review of an order denying a motion to suppress evidence. WIS. STAT. § 971.31(10). Keomanyvong did not, however, file any motions to suppress evidence in this case. Moreover, our independent review of the record does not disclose any arguably meritorious basis to claim that Keomanyvong's trial attorney was constitutionally ineffective by failing to file a suppression motion.

