



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

November 1, 2022

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Daniel Goggin II
Electronic Notice

David L. Lasee
Electronic Notice

Andrew Albert Woods 356055
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2020AP1266-CRNM	State of Wisconsin v. Andrew Albert Woods
2020AP1267-CRNM	(L. C. Nos. 2018CF6, 2018CF167, 2018CF199, 2018CF438)
2020AP1268-CRNM	
2020AP1269-CRNM	

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).

In these consolidated appeals, counsel for Andrew Woods has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Woods' convictions for eight criminal offenses. Woods was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the

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

records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

On January 2, 2018, the State filed a criminal complaint in Brown County case No. 2018CF6 charging Woods with three offenses: (1) operating a motor vehicle without the owner's consent; (2) possession of narcotic drugs; and (3) hit and run—attended vehicle. The complaint alleged that on December 28, 2017, Woods stole a vehicle that had been left running outside of a business. After driving for about three blocks, Woods hit an attended vehicle and then left the accident scene on foot. Woods was apprehended after officers followed his footprints from the accident scene. During a search incident to arrest, officers discovered a baggie containing an off-white powder in Woods' pocket. The powder later tested positive for heroin.

On January 25, 2018, the State filed a second criminal complaint against Woods in Brown County case No. 2018CF167, charging him with one count of armed burglary and eight counts of possession of a firearm by a felon. The complaint alleged that in November 2017, Woods went to a man's home to sell him a firearm. Later that month, Woods broke into the man's home and stole seven firearms, an air compressor, and a laptop. For purposes of the firearm possession charges, the complaint alleged that Woods had been convicted of a felony in February 2001 and that his felony conviction remained of record and unreversed.

On January 30, 2018, the State filed a third criminal complaint against Woods in Brown County case No. 2018CF199, charging him with one count of felony bail jumping and

one count of misdemeanor theft. According to the complaint, on January 9, 2018, Woods stole an air compressor from a Walmart store. The complaint also alleged that Woods was released on bond in case No. 2018CF6 at the time he stole the air compressor and that the conditions of his bond prohibited him from committing any new crimes.

Finally, on March 19, 2018, the State filed a fourth criminal complaint against Woods in Brown County case No. 2018CF438, charging him with one count of human trafficking, one count of threats to injure or accuse of a crime, and one count of felony bail jumping. The complaint alleged that on January 5, 2018, Woods arranged for a gas station clerk to receive oral sex from a woman in exchange for money. Following the sex act, which took place in the gas station bathroom, the clerk paid Woods \$100. Woods later returned to the gas station on two occasions, seeking additional money from the clerk. Woods told the clerk that the woman who had performed oral sex on him was a minor and that Woods would go to the police unless the clerk gave him more money. The clerk paid Woods an additional \$300 on January 6, 2018, and \$500 on January 9. The complaint further alleged that Woods was released on bond in case No. 2018CF6 at the time these events occurred and that his bond conditions prohibited him from committing any new crimes.

The parties ultimately reached a global plea agreement. Under the agreement, Woods agreed to plead no contest to: operating a motor vehicle without the owner's consent and possession of narcotic drugs in case No. 2018CF6; three counts of possession of a firearm by a felon in case No. 2018CF167; felony bail jumping in case No. 2018CF199; and felony bail jumping and an amended charge of receiving compensation for human trafficking in case No. 2018CF438. The plea agreement provided that the remaining counts in all four cases would

be dismissed and read in. The agreement also provided that two uncharged referrals for theft and issuance of worthless checks would be read in at sentencing. In addition, the parties agreed to jointly request a presentence investigation report, and both sides were free to argue at sentencing.

The circuit court conducted a plea colloquy, supplemented by plea questionnaire and waiver of rights forms that Woods had signed regarding each of the four cases. During the plea colloquy, Woods agreed that the criminal complaints set forth an adequate factual basis for his pleas. Following the colloquy, the court accepted Woods' pleas, finding that they were freely, voluntarily, and intelligently made.

The circuit court ultimately imposed concurrent and consecutive sentences totaling eight years' initial confinement followed by ten years' extended supervision. During a subsequent restitution hearing, the parties stipulated that Woods owed \$100 in restitution in case No. 2018CF167 and \$140.98 in case No. 2018CF199. Woods was not ordered to pay restitution in case Nos. 2018CF6 and 2018CF438.

The no-merit report addresses: (1) whether there would be any arguable merit to a claim for plea withdrawal; and (2) whether there are any arguable grounds to challenge Woods' sentences. 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 note that the entry of a valid no-contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations that occurred before the plea was entered. *See State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Although not addressed in the no-merit report, we observe that after sentencing, Woods filed a motion to vacate the DNA surcharges imposed in these cases. It does not appear that the circuit court ever took any action regarding Woods' motion, and the motion is therefore considered to be denied. *See* WIS. STAT. RULE 809.30(2)(i). Upon our independent review of the record, we conclude there would be no arguable merit to a claim that the court erred by failing to vacate the DNA surcharges.

When a court imposes a sentence, it is required by statute to impose a DNA surcharge of \$250 for each felony conviction. WIS. STAT. § 973.046(1r)(a). Woods was convicted of two felonies in case No. 2018CF6, three felonies in case No. 2018CF167, one felony in case No. 2018CF199, and two felonies in case No. 2018CF438. The circuit court imposed a \$250 DNA surcharge for each of those felony convictions, as required by § 973.046(1r)(a).

In his motion to vacate the DNA surcharges, Woods argued that under *State v. Cherry*, 2008 WI App 80, 312 Wis. 2d 203, 752 N.W.2d 393, the imposition of DNA surcharges in this case was discretionary, rather than mandatory. *Cherry*, however, was decided under a previous version of WIS. STAT. § 973.046(1r). *See Cherry*, 312 Wis. 2d 203, ¶1 n.1, ¶5. Under the current version of that statute, a circuit court “shall” impose a DNA surcharge of \$250 for each felony conviction. Sec. 973.046(1r)(a). Our supreme court has stated that the imposition of DNA surcharges under the current version of § 973.046(1r) is “mandatory.” *State v. Scruggs*, 2017 WI 15, ¶8, 373 Wis. 2d 312, 891 N.W.2d 786.

Woods' motion to vacate the DNA surcharges also cited this court's decision in *State v. Williams*, 2017 WI App 46, 377 Wis. 2d 247, 900 N.W.2d 310, *aff'd in part, rev'd in part*,

2018 WI 59, 381 Wis. 2d 661, 912 N.W.2d 373. In *Williams*, we concluded that the mandatory DNA surcharge imposed by the revised version of WIS. STAT. § 973.046(1r) was an unconstitutional ex post facto law as applied to the defendant because his offense occurred before the revised version of the statute went into effect and because the defendant had already provided a DNA sample as a result of a prior conviction. *Williams*, 377 Wis. 2d 247, ¶¶24-26. Those factual circumstances are not present in this case, where Woods' offenses occurred after the amended version of § 973.046(1r) went into effect. Moreover, the supreme court reversed the portion of our opinion in *Williams* pertaining to the DNA surcharge, concluding that the amended version of § 973.046(1r) was not an unconstitutional ex post facto law. *State v. Williams*, 2018 WI 59, ¶¶1, 43, 381 Wis. 2d 661, 912 N.W.2d 373. For these reasons, *Williams* does not provide any basis to argue that the DNA surcharges imposed in this case were improper.

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

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved of his obligation to further represent Andrew Woods in these matters. *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