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 IV

December 15, 2022

To:

Hon. Robert P. VanDeHey
Circuit Court Judge
Electronic Notice

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
Electronic Notice

Kelsey Jarecki Morin Loshaw
Electronic Notice

Lisa A. Riniker
Electronic Notice

Sean Anthony Stephens
Dane County Jail
115 W. Doty St.
Madison, WI 53703

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

2021AP1077-CRNM State of Wisconsin v. Sean Anthony Stephens (L.C. # 2020CF215)

Before Fitzpatrick, 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).

Attorney Kelsey Loshaw, as appointed counsel for Sean Anthony Stephens, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and ***Anders v. California***, 386 U.S. 738 (1967). Counsel provided Stephens with a copy of the report, and both counsel and this court advised him of his right to file a response. Stephens has not responded. I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After an

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

independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal.

Stephens pled no contest to one count of resisting an officer. As part of a plea agreement, the court dismissed three felony controlled substance counts and a misdemeanor possession of paraphernalia count. The court imposed a jail sentence of 144 days which, with application of credit for presentence custody, was time already served.

The no-merit report addresses whether the circuit court erred by denying Stephens' motion to suppress evidence. The State argued in circuit court that the entry into Stephens' room was lawful under the community caretaker exception to the warrant requirement. And, once police were there, at least some of the controlled substance evidence was in plain view. The court appeared to agree, denying the motion because the entry "was motivated as a welfare check."

That decision was made in November 2020. In May 2021, the United States Supreme Court held that the community caretaker exception does not apply to the home. ***Caniglia v. Strom***, 141 S. Ct. 1596, 1598-1600 (2021). Accordingly, the home entry in Stephens' case cannot be held lawful on that basis.

The no-merit report nonetheless concludes that it would be frivolous to argue on appeal that Stephens' motion to suppress must be granted. It reaches that conclusion in part based on anticipation of an argument by the State that the exclusionary rule should not be applied here because the officers conducting the entry acted in good faith reliance on community caretaker case law existing before ***Caniglia***. *See* ***State v. Dearborn***, 2010 WI 84, ¶¶30-49, 327 Wis. 2d

252, 786 N.W.2d 97 (exclusionary rule would not be applied to warrantless search when officers reasonably relied on Wisconsin precedent that was later overruled by the U.S. Supreme Court).

I agree that it would be frivolous to argue that the good faith exception does not apply here. For Stephens' motion to be granted despite application of the good faith exception, it would be necessary for him to establish that the police entry into his room was unlawful under Wisconsin community caretaker law as it existed before ***Caniglia***. I conclude that such an argument would be frivolous. The evidence showed that police were asked to check on Stephens because he had missed several drug treatment appointments and was exhibiting bizarre behavior.

The no-merit report also addresses whether Stephens' plea was entered knowingly, voluntarily, and intelligently. The report notes two ways in which the plea colloquy purportedly did not comply with the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08.

The circuit court failed to inform Stephens that the court was not bound by the State's sentencing recommendation for six months in jail that was part of the plea agreement. However, it would be frivolous for Stephens to argue that this omission was not harmless. *See* ***State v. Johnson***, 2012 WI App 21, ¶14, 339 Wis. 2d 421, 811 N.W.2d 441 (applying harmless error analysis to a circuit court's failure to comply with this requirement and concluding that the error was harmless where the defendant received the benefit of the plea agreement). Here, the court rejected the State's agreed-to sentencing recommendation and instead adopted Stephens' lesser request for time served.

The court also failed to give the required immigration warning. However, the no-merit report states that Stephens cannot make the necessary allegations about his immigration status to obtain relief on this basis.

With those exceptions, the plea colloquy sufficiently complied with the requirements of ***Brown***, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08, relating to the nature of the charge, the rights Stephens was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses Stephens' sentence. As to the length of the jail term, any potential issue is moot because the time has already been served. The record does not show any basis to challenge other aspects of the sentence. There is no arguable merit to this issue.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Loshaw is relieved of further representation of Stephens 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