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DISTRICT II

February 1, 2023

To:

Hon. Daniel J. Borowski
Circuit Court Judge
Electronic Notice

LeAnne Karls
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

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Nathan F. Haberman
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Mark A. Schoenfeldt
Electronic Notice

Kevin E. Botwright, #537302
Chippewa Valley Correctional Treatment
Facility
2909 E. Park Ave.
Chippewa Falls, WI 54729

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

2020AP551-CRNM State of Wisconsin v. Kevin E. Botwright (L.C. #2017CF230)

Before Gundrum, P.J., Grogan and Lazar, 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).

Kevin E. Botwright appeals a judgment of conviction for possession of methamphetamine as a second or subsequent offense and as a party to a crime contrary to WIS. STAT. § 961.43(3g)(g) (2017-18),¹ and possession of methamphetamine paraphernalia as a second or subsequent offense and as a party to a crime contrary to WIS. STAT. § 961.573(3)(a) (2017-18). Botwright's appointed appellate counsel has filed a no-merit report pursuant to WIS.

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

STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Botwright was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the Record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Botwright was charged with the crimes of conviction after a bystander approached a police officer and reported that two men were having a dispute nearby. The officer responded to the scene and saw Botwright exiting the garage of his residence. Botwright reported that the dispute had been with his friend Jordan Peterson but gave suspicious explanations about where Peterson had gone. Botwright eventually admitted that Peterson, who was wanted on a felony warrant, was hiding in the garage. Botwright's father, the property owner, gave permission for the police to enter that structure. Peterson was found under a truck, and next to him were a duffel bag and cell phone. Within the duffel bag were two jars containing methamphetamine and needles.

Botwright was given *Miranda*² warnings and waived his rights during an interview at the Calumet County Jail. Following the interview, police decided to search the vehicle Peterson had been driving. The search was done with the consent of Peterson's father, who owned the vehicle. Police discovered additional methamphetamine and paraphernalia in the vehicle, along with a cell phone.

² *See Miranda v. Arizona*, 384 U.S. 436 (1966).

Botwright agreed to plead no contest to the charges. In exchange, the State agreed to recommend concurrent four-year sentences, each consisting of two years' initial confinement and two years' extended supervision with conditions, with those sentences running consecutively to any other sentence. The defense was free to argue at sentencing. Following a thorough colloquy, the circuit court found that the State had established a factual basis for Botwright's pleas and that Botwright's pleas were knowing, intelligent, and voluntary. The court proceeded immediately to sentencing, at which time it imposed concurrent sentences totaling two years' initial confinement and three years' extended supervision, consecutive to any other sentence.

The no-merit report addresses whether there is any nonfrivolous issue that could be raised regarding whether Botwright's pleas were knowing, intelligent, and voluntary; whether there was a sufficient factual basis for his pleas; whether the circuit court erroneously exercised its sentencing discretion; and whether the Record would support any claim of ineffective assistance of counsel. Our review of the Record satisfies us that the no-merit report thoroughly analyzes these issues and properly concludes any challenge based upon them would lack arguable merit. Our review of the Record discloses no other potentially meritorious issues for appeal.

Based upon the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further responsibility for representing Kevin E. Botwright in this appeal. *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