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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

February 21, 2023

To:

Hon. Rian Radtke
Circuit Court Judge
Electronic Notice

Michelle Weisenberger
Clerk of Circuit Court
Trempealeau County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

John Harrison Sacia
Electronic Notice

Vicki Zick
Electronic Notice

Steven Paul Stauffer, Jr.
Eau Claire County Jail
728 2nd Avenue
Eau Claire, WI 54701

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

2021AP434-CRNM State of Wisconsin v. Steven Paul Stauffer, Jr.
2021AP435-CRNM (L. C. Nos. 2018CF90, 2020CF15)

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 Steven Stauffer, Jr., filed no-merit reports concluding that no grounds exist to challenge Stauffer's convictions for possession with intent to deliver between 200 and 1,000 grams of tetrahydrocannabinols (THC), as a party to a crime; operating a motor vehicle with a restricted controlled substance in his blood, as a fifth or sixth offense; and felony bail jumping. Stauffer was informed of his right to file a response to the no-merit reports, and he has not responded. Upon our independent review of the 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 (2021-22).¹

In Trempealeau County case No. 2018CF90, the State charged Stauffer with possession with intent to deliver between 200 and 1,000 grams of THC; maintaining a drug trafficking place; possession of drug paraphernalia; child neglect; two counts of contributing to the delinquency of a minor; and operating a motor vehicle with a restricted controlled substance in his blood, fifth or sixth offense—all but the operating count as a party to a crime. The complaint stated that confidential informants reported to law enforcement that Stauffer and his wife were using and repackaging marijuana for resale inside of a residence that they shared with their minor children. During a search of the residence pursuant to a warrant, law enforcement found suspected drug ledgers and various items of drug paraphernalia, including a digital scale, glass pipes, and plastic baggies. As law enforcement was executing the warrant, they were informed that Stauffer was driving in the direction of the house, but that he pulled into the wrong driveway. Law enforcement initiated a stop of the vehicle, and drug paraphernalia was observed in plain view. Stauffer stated that he had marijuana in the vehicle and admitted to smoking crack cocaine before driving home. During a search of the vehicle, law enforcement discovered one pound of marijuana.

Stauffer filed a motion for an in-camera inspection, seeking disclosure of the identity of the confidential informants. After a hearing, the circuit court denied the motion. The parties subsequently entered into a plea agreement. In exchange for Stauffer's no-contest pleas to

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

possession with intent to deliver THC, as a party to a crime, and to operating with a restricted controlled substance, fifth or sixth offense, the State agreed to recommend that the remaining counts be dismissed and read in. The State also agreed to join in defense counsel's recommendation for a withheld sentence and three years of probation on the possession count, and one year in jail on the operating charge. Because a guilty or no-contest plea to the operating charge would have required an immediate revocation of Stauffer's bond, the parties agreed that Stauffer would enter his no-contest plea to the possession count and reserve entry of Stauffer's plea on the operating count to the day of sentencing. After a colloquy, the court accepted Stauffer's no-contest plea to a party to the crime of possession with intent to deliver THC.

Before the date scheduled for the continued plea hearing and sentencing, the State charged Stauffer with felony bail jumping in Trempealeau County case No. 2020CF15. That charge arose from allegations that Stauffer drove without a valid driver's license, in violation of his bond. The bail jumping charge in the new case was included as part of a global plea agreement, and, in exchange for his no-contest plea to that charge, the State agreed not to charge Stauffer with operating after revocation. The State also agreed to join in defense counsel's recommendation for a withheld sentence and one year of probation, concurrent with any sentence in the 2018 case.

After a colloquy, the circuit court accepted Stauffer's no-contest pleas. Out of a maximum possible aggregate sentence of twenty-two years—with a mandatory minimum of six months for the operating conviction—and consistent with the joint recommendation, the court

withheld sentence and placed Stauffer on three years of probation on the possession count, one year probation on the felony bail jumping count, and one year in jail for the operating charge.²

Although the no-merit reports do not specifically discuss it, we conclude that any challenge to the circuit court’s denial of Stauffer’s motion to disclose the identity of the confidential informants would lack arguable merit. Under WIS. STAT. § 905.10(1), the State “has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law[.]” There are several exceptions to the privilege, including when an informant “may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case[.]” Sec. 905.10(3)(b).

In his motion, Stauffer asserted that both of the confidential informants were children “whose knowledge [of drug trafficking or possession] is dubious at best.” Stauffer added that children can be “untruthful and manipulated based upon their lack of maturity,” and “[i]mpeachment of both informants is essential to Mr. Stauffer’s defense.” As the circuit court noted, information from the informants was relevant only to the search warrant application, and there is no indication that the informants would have information relevant to the fair determination of the issue of guilt or innocence. *Cf. State v. Outlaw*, 108 Wis. 2d 112, 129-35, 321 N.W.2d 145 (1982). “Given the strength of the evidence against [Stauffer], the circuit court could reasonably conclude that the [informants’] testimony would not be necessary to the defense because it could not ‘have created in the minds of the jurors a reasonable doubt’

² At the time of the operating offense, April 17, 2018, the mandatory minimum sentence for that crime was six months. *See* WIS. STAT. § 346.65(2)(am)5. (2017-18).

regarding [the] defendant’s guilt.” *See State v. Nellesen*, 2014 WI 84, ¶33, 360 Wis. 2d 493, 849 N.W.2d 654 (citation omitted).

The no-merit reports address whether Stauffer knowingly, intelligently, and voluntarily entered his no-contest pleas and whether the circuit court properly exercised its sentencing discretion. Upon reviewing the records, we agree with counsel’s description, analysis, and conclusion that any challenge to Stauffer’s pleas or sentences would lack arguable merit. The no-merit reports set forth an adequate discussion of these potential issues to support the no-merit conclusion, and we need not address them further. Our independent review of the records discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of her obligation to further represent Steven Stauffer, Jr., 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