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DISTRICT III

April 4, 2023

To:

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Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Megan Elizabeth Lyneis
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Kyle R. Mayo
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500 Forest St.
Wausau, WI 54403

Connor Q. Savada
1956 Maryland Ave.
Saint Paul, MN 55119

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

2022AP1866-CRNM State of Wisconsin v. Connor Q. Savada (L. C. No. 2019CF164)

Before Gill, 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).

Counsel for Connor Savada has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge Savada's conviction for operating a motor vehicle with a detectable amount of a restricted controlled substance in the blood, as a third offense. Savada was advised of his right to file a response to the no-merit report, but he has not responded. At this court's request, counsel filed a supplemental no-merit report addressing a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

single issue. Having reviewed the no-merit report and the supplemental no-merit report, and based upon our independent review of the record 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 judgment of conviction. See WIS. STAT. RULE 809.21.

Savada was originally charged with operating a motor vehicle while intoxicated (OWI), as a fourth offense (Count 1); possession of an illegally obtained prescription drug (Count 2); and misdemeanor bail jumping (Count 3). According to the criminal complaint, a citizen witness reported seeing a van with a specific license plate number driving “all over the road” and “weaving in the lanes” before pulling into a convenience store parking lot. Police responded to the parking lot and saw the same van parked outside of the convenience store. Savada exited the store and confirmed that he was the driver of the van. Savada was “very jittery,” “talked very fast,” and “appeared to not have simple control of his body movement.” Savada was unable to complete the HGN test or the one-leg-stand test, and an officer observed eight clues of impairment on the walk-and-turn test. A preliminary breath test showed a blood alcohol concentration of 0.00.

Savada was arrested for OWI. During a search incident to arrest, an officer found a 600 milligram Gabapentin pill on Savada’s person. Savada refused to consent to a blood draw. His blood was later drawn pursuant to a warrant, however, and the sample tested positive for methamphetamine.

The criminal complaint alleged that Savada was released on bond in Lincoln County case No. 2018CM190 at the time these events occurred. The complaint also alleged that Savada had

three prior OWI convictions. However, the circuit court granted Savada's motion to collaterally attack one of those prior convictions.

Thereafter, Savada's attorney moved for a competency examination, which the circuit court granted. In August 2020, a psychologist filed a report opining that Savada was not competent to stand trial but could be treated to competency within the statutory time period. Following a competency hearing, during which both the psychologist and Savada testified, the court deferred making a decision regarding Savada's competency, with the understanding that Savada was about to begin receiving mental health treatment as a condition of his probation in a Minnesota case. In November 2020, the same psychologist filed a supplemental competency report, in which she opined that Savada was competent to stand trial. During a subsequent competency hearing, Savada told the court that he believed he was competent, and Savada's attorney stipulated that Savada was competent to proceed. The court then found, based on the supplemental competency report, that Savada was competent to proceed.

The State later amended Count 1 to a charge of operating a motor vehicle with a detectable amount of a restricted controlled substance in the blood, as a third offense. The parties reached a plea agreement, which provided that Savada would enter a plea to Count 1 and the remaining counts would be dismissed and read in at sentencing. The plea agreement also provided that refusal proceedings against Savada would be dismissed. In addition, the parties agreed to jointly recommend that the circuit court withhold sentence and place Savada on probation for eighteen months, with seventy-five days of conditional jail time.

Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Savada's guilty plea to Count 1, finding that his plea was

freely, voluntarily, and intelligently made. Savada's attorney confirmed that the court could rely on the allegations in the criminal complaint as the factual basis for Savada's plea, and the court found that an adequate factual basis for the plea existed. The court then followed the parties' joint sentencing recommendation by withholding sentence and placing Savada on probation for eighteen months, with seventy-five days of conditional jail time. The court later entered an amended judgment of conviction granting Savada ten days of sentence credit.

The no-merit report does not address whether there would be any arguable merit to a claim that the circuit court erred by finding that Savada was competent to proceed. Based upon our independent review of the record, however, we conclude there would be no arguable merit to such a claim. The examining psychologist opined in her supplemental competency report that Savada was competent. At a subsequent hearing, Savada told the court that he was competent, and his attorney stipulated that he was competent to proceed. There is nothing in the record to suggest that Savada was not competent at the time of that hearing. Under these circumstances, there would be no arguable basis to challenge the court's competency determination.

The no-merit report addresses whether Savada's guilty plea was knowing, intelligent, and voluntary. When reviewing the appellate record, we observed that although Savada entered a guilty plea to operating a motor vehicle with a detectable amount of a restricted controlled substance in the blood, as a third offense, the plea questionnaire and waiver of rights form stated that Savada was entering a plea to "OWI 3." Attached to the plea questionnaire and waiver of rights form was a two-page document entitled "Elements of Common Criminal Offenses," which contains a table listing twenty-one different offenses. The only offense on that table with an "X" next to it is "OWI." The table lists the elements of an OWI charge, but it does not list the elements of operating a motor vehicle with a detectable amount of a restricted controlled

substance in the blood. In fact, nothing on the plea questionnaire and waiver of rights form indicated that Savada was entering a plea to that offense.

During the plea colloquy, the circuit court asked Savada whether he had read the amended criminal complaint and understood “the elements of the charge the State would have to prove beyond a reasonable doubt before you could be found guilty.” Savada responded in the affirmative. The court then stated, “Your attorney has provided me with a document that goes over the elements. Do you want me to go over those elements with you again or do you understand them?” Savada replied, “I don’t need you to, no.” Again, however, the plea questionnaire listed the elements of an OWI charge, rather than a charge of operating a motor vehicle with a detectable amount of a restricted controlled substance in the blood. Nevertheless, later on during the plea colloquy, the court correctly stated that Savada was entering a plea to “operating with a restricted controlled substance in [his] blood as a third offense” and that Savada “did drive a motor vehicle with a detectable amount of restricted controlled substance in [his] blood.”

Under these circumstances, we questioned whether the circuit court fulfilled its mandatory duty during the plea colloquy to ensure that Savada’s plea was made “with understanding of the nature of the charge,” including an awareness of the essential elements of the crime. *See* WIS. STAT. § 971.08(1)(a); *see also State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906; *State v. Bangert*, 131 Wis. 2d 246, 267, 389 N.W.2d 12 (1986). We therefore ordered appellate counsel to file a supplemental no-merit report addressing this potential issue.

In the supplemental no-merit report, counsel asserts that she has consulted with Savada about this potential defect in the circuit court's plea colloquy. Based on that consultation, counsel contends that even if the plea colloquy was deficient, there would be no arguable merit to a claim for plea withdrawal on that basis because Savada cannot allege that he did not understand the elements of the offense to which he pled. *See Brown*, 293 Wis. 2d 594, ¶39. In support of this assertion, appellate counsel has submitted her own affidavit, in which she avers that she and Savada discussed the plea colloquy, the circuit court's duties during the colloquy, and the elements of the offense to which Savada pled. Based on the information that Savada provided during those discussions, counsel avers that she concluded there was no basis to file a motion for plea withdrawal based on any defect in the plea colloquy.

After considering the assertions in the supplemental no-merit report and in appellate counsel's affidavit, we agree that there would be no arguable merit to a claim for plea withdrawal on the grounds that the circuit court failed to adequately ensure Savada's understanding of the elements of the offense to which he pled. Our review of the record shows that the court otherwise complied with its mandatory duties during the plea colloquy. We therefore agree with counsel's description, analysis, and conclusion that there would be no arguable merit to a claim that Savada's plea was not knowing, intelligent, and voluntary. In addition, we agree with counsel that there would be no arguable merit to a claim challenging the factual basis for Savada's plea.

The no-merit report also addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion, that the court imposed an illegal sentence, that the court relied on inaccurate information or improper factors when sentencing Savada, or that any new factor exists that would provide a basis for sentence modification. We

agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Megan Elizabeth Lyneis is relieved of any further representation of Connor Savada 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