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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 I

May 23, 2023

To:

Hon. Jonathan D. Watts
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Winn S. Collins
Electronic Notice

Pamela Moorshead
Electronic Notice

Joseph Craig Cox
5642 N. 65th St.
Milwaukee, WI 53218

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

2021AP1873-CRNM State of Wisconsin v. Joseph Craig Cox (L.C. # 2018CF1958)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Joseph Craig Cox appeals from a judgment, entered on his guilty pleas, convicting him on one count of fleeing or eluding charge, two drug charges, and two bail jumping charges, all as a habitual criminal. Appellate counsel, Pamela Moorshead, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Cox was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude there are no

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

issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgment.

According to the criminal complaint, off-duty Milwaukee police officer J.S. was driving home around 2:00 a.m. on April 22, 2018, when a vehicle pulled up on the passenger side of his vehicle at a high rate of speed. J.S. looked over and saw a silver Infiniti with dark tinted windows. The vehicle came closer and its driver's window rolled down. J.S. "saw the driver's right hand come up from below the window line and he observed a black handgun in the driver's right hand that was pointed towards the roof of the vehicle." J.S. attempted to speed up, but the Infiniti matched his speed. Eventually, though, the Infinity passed in front of J.S.'s vehicle and departed.

Around 4:00 p.m. the same day, two patrol officers noticed a silver Infiniti, like the one that J.S. encountered, parked outside a residence. Around 6:00 p.m., the officers observed Cox leave the residence and get into the car. At the same time, a woman exited the residence and entered a black Oldsmobile that was also parked outside. The officers activated the marked squad's lights and sirens and attempted to stop Cox. Cox fled; the officers did not pursue him.

On April 24, 2018, J.S. viewed a photo array in which he identified Cox as the driver with the gun. The license plate of the Oldsmobile was also researched. Police learned that Laparis Kimble was the registered owner, the address on her registration matched that of the house she and Cox were parked in front of, and she had reported a domestic violence incident involving Cox a few months prior in December 2017.

On April 25, 2018, officers went to Kimble's home to look for Cox. Upon arrival, they met with Kimble, who let them search most of her home. When officers asked to search the

attic, the door to which was locked from the outside, Kimble said she did not have the key. She agreed to allow officers to remove the lock or the door to enter the attic, where Cox was found hiding under a blanket. There were also seventy-eight pills of oxycodone and some marijuana recovered near Cox. After being advised of his rights, Cox admitted fleeing from the patrol officers because he was afraid. He also admitted that both drugs were his, explaining that the marijuana was for personal use only and the oxycodone was for pain.

Cox was charged with seven offenses, all as a habitual criminal: misdemeanor disorderly conduct with a dangerous weapon and possession of a firearm by a felon for the encounter with J.S.; fleeing or eluding for refusing to stop for the patrol officers; possession of narcotic drugs and possession of tetrahydrocannabinols as a second or subsequent offense after the attic search; and two counts of bail jumping, one based on the fleeing and one based on the drugs.

Cox moved to suppress the drug evidence obtained from the warrantless search of Kimble's attic, arguing that she had been coerced into giving consent to enter and that the attic was beyond the scope of that consent. The State countered that Cox had no standing because his motion mentioned only Kimble's rights. The State also invoked the doctrine of inevitable discovery, arguing that police were in the process of obtaining a warrant at the time other officers entered Kimble's home.

After a hearing, the circuit court granted the motion to suppress. It found that Kimble gave consent to enter and search but that, rather than hold the scene once Cox was discovered and wait for the warrant, police impermissibly began searching the attic before the warrant had been issued. The circuit court rejected the argument that police were making a permitted safety search of the area around Cox and rejected the application of inevitable discovery.

The State moved for reconsideration. Upon review, the circuit court reversed itself, finding that the doctrine of inevitable discovery did apply and that it had erred when it concluded otherwise. Suppression of the drug evidence was, therefore, denied.

Cox then decided to enter pleas, without an offer from the State, to the five charges that did not involve J.S. Cox insisted he did not commit those offenses and wanted to take the charges to trial. The circuit court conducted a colloquy with Cox and accepted his guilty pleas.[2] Cox was given concurrent and consecutive jail terms totaling fifteen months of confinement, to be served consecutive to a revocation sentence. Cox appeals.

The first potential issue discussed in the no-merit report is whether the circuit court erred when it denied Cox's suppression motion. A circuit court's decision on a motion to suppress evidence presents a mixed question of fact and law. *See* ***State v. Casarez***, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. We do not reverse the circuit court's factual findings unless clearly erroneous, but the application of constitutional principles to those findings is reviewed *de novo*. *See* ***id.***

The circuit court originally granted the suppression motion because it concluded that the police had improperly begun a search of the attic, thereby uncovering the oxycodone and marijuana before securing their warrant, when they should have been freezing or holding the scene until the warrant arrived. When the State moved for reconsideration, the circuit court reviewed ***State v. Jackson***, 2016 WI 56, 369 Wis. 2d 673, 882 N.W.2d 422, which explains the

[2] The two counts involving J.S. were eventually dismissed and read in. J.S. had moved to Colorado and was reluctant to return to Wisconsin for trial at his own expense.

analysis for application of inevitable discovery: whether the State has proven by a preponderance of the evidence that officers inevitably would have discovered the evidence in dispute by lawful means. *See* ***id.***, ¶¶6, 74. Based on ***Jackson***, the circuit court concluded that it had improperly rejected application of the inevitable discovery doctrine. Accordingly, it granted reconsideration and denied suppression.

Police had already been seeking a search warrant at the time they entered Kimble's home. There is no indication in the record that the warrant application was based on any information obtained after that entry. Had officers done as the circuit court suggested, freezing the scene after finding Cox until the search warrant arrived on site, they still would have found the drugs while searching under the warrant. Accordingly, the no-merit report properly analyses this issue as lacking arguable merit.[3]

The next issue the no-merit report addresses is whether there is any arguable merit to plea withdrawal on the grounds that the pleas were not knowing, intelligent, and voluntary or that they lacked a factual basis. Our review of the record confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court separately informed Cox of the effects of read-in offenses, as recommended by ***State v. Straszkowski***, 2008 WI 65, ¶97, 310 Wis. 2d 259, 750 N.W.2d 835. The circuit court also verified that it could rely on the facts as set out in the

[3] Appellate counsel also takes issue with the circuit court's factual determination that Kimble gave consent to enter and search her home. However, we also agree with counsel's conclusion that inevitable discovery also applies to any illegality in obtaining that consent, so there is no arguable merit to challenging that portion of the circuit court's decision, either.

criminal complaint for a factual basis, and the complaint alleges sufficient facts for each charge. Thus, there is no arguable merit to a claim that Cox's pleas were anything other than knowing, intelligent, and voluntary, or to a claim that the pleas lacked a factual basis.

The final issue the no-merit report discusses is whether the circuit court properly exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The fifteen-month total sentence imposed is well within the forty-two-year range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of further representation of Cox 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