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DISTRICT III

June 20, 2023

To:

Hon. John Zakowski
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Timothy T. O'Connell
Electronic Notice

Rilo D. Spears 558254
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

2021AP1828-CRNM State of Wisconsin v. Rilo D. Spears (L. C. No. 2019CF1097)

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).

Rilo Spears appeals from a judgment convicting him of two counts of battery by a prisoner. Attorney Timothy O'Connell has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ Spears was informed of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

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

Based upon an incident in which two inmates assaulted three correctional officers at the Green Bay Correctional Institution, the State charged Spears with two counts of battery by a prisoner—with one count as a party to the crime and both counts as a repeat offender. Spears agreed to plead no contest to both counts in exchange for dismissal of the repeater penalty enhancers and the State’s agreement to cap its sentencing recommendation to consecutive terms of twelve months of initial confinement followed by twelve months of extended supervision on each count. The circuit court accepted Spears’ implicit pleas² after conducting a brief plea colloquy and reviewing Spears’ signed plea questionnaire and waiver of rights form, with attached jury instructions.

The circuit court then proceeded directly to sentencing. After hearing from the parties, the court adopted their joint recommendation and imposed sentences of two years’ initial confinement followed by one year of extended supervision on each count, to be served concurrently with each other but consecutively to a sentence Spears was already serving. The court initially granted 510 days of sentence credit, but it subsequently amended the judgment of conviction to reflect zero days of credit because Spears was in custody serving another sentence during the entire time this case was pending. *See State v. Beets*, 124 Wis. 2d 372, 378-79, 369 N.W.2d 382 (1985).

The no-merit report addresses the validity of the pleas and sentences. Upon reviewing the record, we agree with counsel’s conclusion that there is no arguably meritorious basis to

² Although the circuit court neglected to ask Spears how he pled—and Spears thus never expressly and personally articulated his pleas—the only inference possible from the record is that Spears intended to plead no contest to each count. *See State v. Burns*, 226 Wis. 2d 762, 774, 594 N.W.2d 799 (1999).

challenge either the pleas or sentences. In addition to the points discussed by counsel, we note that the State's actual recommendation for concurrent two-year terms of initial confinement on each count varied slightly from the recommendation of two consecutive one-year terms of initial confinement set forth in the plea agreement. We are satisfied that the recommendation did not materially breach the plea agreement, however, because it did not exceed the total amount of time to which the State had agreed to cap its recommendation.

We further note that Spears' pleas forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights other than a double jeopardy issue that could be resolved based upon the record. See *State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886; see also *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. See WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Timothy O'Connell is relieved of any further representation of Rilo Spears in this matter pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals