



OFFICE OF THE CLERK
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

July 18, 2023

To:

Hon. Jane M. Sequin
Circuit Court Judge
Electronic Notice

Caroline Brazeau
Clerk of Circuit Court
Marinette County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Roberta A. Heckes
Electronic Notice

Montgomery Robert Tappy 691306
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2023AP571-CRNM State of Wisconsin v. Montgomery Robert Tappy
(L. C. No. 2022CF5)

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 Montgomery Tappy has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ concluding that no grounds exist to challenge Tappy's convictions for possession with intent to deliver methamphetamine (more than ten but not more than fifty grams) and maintaining a drug trafficking place, both counts as a party to the crime. Tappy was informed of his right to file a response to the no-merit report, but he has not responded. Upon

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

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.

According to the criminal complaint, police received information from a confidential informant that led them to believe drug sales were taking place at Tappy's residence. An officer searched garbage bags that had been deposited at the end of Tappy's driveway and found drug paraphernalia inside them, including aluminum foil that appeared to have been used to package drugs and had apparent drug residue on it.

Based on the information from the confidential informant and the items found in Tappy's garbage, officers conducted an initial search of Tappy's residence, pursuant to WIS. STAT. § 302.113(7r).² During the initial search of the residence, officers discovered methamphetamine and fentanyl, both of which appeared to be packaged for sale, in the kitchen. After receiving *Miranda*³ warnings, Tappy admitted to having methamphetamine and heroin in his bedroom, and he also admitted that two other individuals had been staying with him and using methamphetamine in his residence. Officers then obtained a search warrant and conducted a more extensive search of the residence. During that search, officers found oxycodone, methamphetamine, and drug paraphernalia in Tappy's bedroom. They also discovered marijuana plants and a bag containing dried THC clippings in a hidden room under a staircase.

² WISCONSIN STAT. § 302.113(7r) provides that a law enforcement officer may search “[a] person released [to extended supervision], his or her residence, and any property under his or her control” at any time during the person’s period of supervision “if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of release to extended supervision.” According to the criminal complaint, Tappy had been released from prison two weeks before the search of his residence and was on “felony supervision” at the time of the search.

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

The State subsequently charged Tappy with eight counts, each as a party to the crime and as a repeater: possession with intent to deliver methamphetamine (more than ten grams but not more than fifty grams); possession with intent to deliver narcotics; manufacture or delivery of THC (not more than 200 grams); maintaining a drug trafficking place; possession of narcotic drugs; possession of methamphetamine; and two counts of possession of drug paraphernalia.

Pursuant to a plea agreement, Tappy entered no-contest pleas to Count 1 (possession with intent to deliver methamphetamine (more than ten grams but not more than fifty grams)) and Count 4 (maintaining a drug trafficking place), without the repeater enhancers. In exchange for Tappy's pleas, the State agreed that the manufacture or delivery of THC charge would be dismissed outright, and the remaining charges would be dismissed and read in. The State also agreed to recommend three years' initial confinement followed by two years' extended supervision on Count 1, consecutive to any other sentence, and one year of initial confinement followed by one year of extended supervision on Count 4, consecutive to Tappy's sentence on Count 1. The defense was free to argue at sentencing.

Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Tappy's no-contest pleas, finding that they were freely, voluntarily, and intelligently entered. Tappy agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for his pleas, and the court found that the complaint provided an adequate factual basis. The court subsequently sentenced Tappy to four years' initial confinement followed by three years' extended supervision on Count 1, consecutive to any other sentence. On Count 4, the court sentenced Tappy to one year of initial confinement followed by one year of extended supervision, consecutive to his sentence on Count 1.

The no-merit report addresses: (1) whether Tappy's no-contest pleas were knowing, intelligent, and voluntary; (2) whether there was an adequate factual basis for Tappy's pleas; (3) whether Tappy's trial attorney was constitutionally ineffective; and (4) whether the circuit court erroneously exercised its sentencing discretion. 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. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Roberta A. Heckes is relieved of her obligation to further represent Montgomery Tappy in this matter. *See* 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