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DISTRICT II

September 6, 2023

To:

Hon. Robert S. Repischak
Circuit Court Judge
Electronic Notice

Winn S. Collins
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Jill Marie Skwor
Electronic Notice

Daniel M. Aguilar
1613 Arthur Ave.
Racine, WI 53405

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

2022AP2068-CRNM State of Wisconsin v. Daniel M. Aguilar (L.C. #2018CF1409)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Daniel M. Aguilar appeals a judgment of conviction entered upon his no-contest plea to possession of cocaine as a second or subsequent offense, contrary to WIS. STAT. § 961.41(3g) (2017-18).¹ Aguilar's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Aguilar was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there is

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

no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Aguilar was charged with disorderly conduct and possession of cocaine as a second-or-subsequent offense. On September 23, 2018, law enforcement received a report that Aguilar was engaging in harassing conduct at a bar toward a female patron who had previously assisted police in a drug investigation of Aguilar. Law enforcement spoke with the victim and a deputy entered the bar to speak with Aguilar. Officers were aware Aguilar was on supervision at the time, and he appeared to have an alcoholic drink in his hand. He was frisked for weapons and refused to answer questions, at which time he was placed in handcuffs and escorted outside of the bar to continue the investigation. He was ultimately taken into custody and searched at the Racine County Jail, where corrections personnel found a baggie of suspected cocaine in his jeans pocket. Aguilar was then placed on a probation hold.

Aguilar filed a motion to dismiss the disorderly conduct charge and a motion to suppress, arguing he was unlawfully seized at the bar. The circuit court held an evidentiary hearing and, based upon the parties' arguments, concluded the critical issue for resolution was whether officers had probable cause to believe Aguilar had engaged in disorderly conduct. The court noted that the victim and Aguilar had differing stories about what occurred. The court concluded that, based on the victim's description of Aguilar's conduct in the bar—which included following her, holding a cell phone within inches of her face, and appearing to record her—officers had probable cause to arrest Aguilar for disorderly conduct under the circumstances.²

² Law enforcement was also aware at the time they entered the bar that the victim claimed Aguilar had previously threatened her and that Aguilar was on supervision at the time.

The court also concluded that the victim was a citizen informant and that law enforcement was not required to have independent corroboration of her claims to establish probable cause for arrest.

Aguilar filed a motion to reconsider, which had not yet been acted on at the time a new judge was assigned to the case. Aguilar then filed a new motion. The scheduled motion hearing was converted to a plea-and-sentencing date after Aguilar reached a plea agreement with the State and withdrew his motion. At the plea hearing, and following a thorough colloquy, the circuit court accepted Aguilar's no-contest plea to possession of cocaine as a second-or-subsequent offense. The disorderly conduct charge was dismissed outright and the parties jointly recommended a sentence that would amount to time served, as it would run concurrently with Aguilar's revocation sentence. The circuit court imposed one year's jail time, concurrent with the revocation sentence for which Aguilar had already served approximately one-and-one-half years.

Counsel's no-merit report addresses whether there would be any non-frivolous basis to argue Aguilar's plea should be withdrawn. We agree with counsel's assessment that there would be no arguable merit to challenging the validity of Aguilar's plea or the adequacy of the plea colloquy.

During the plea hearing, Aguilar's trial counsel stated he believed he had a very good trial case, as he believed some video evidence would have allowed him to make the argument that the cocaine had been planted on Aguilar. Trial counsel further stated that Aguilar had elected to go forward with the plea "[s]omewhat against [counsel's] advice," and Aguilar personally confirmed that he "just want[ed the case] over with." A guilty or no-contest plea

waives all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. As a result, there is no arguable merit to any claim regarding possible trial defenses.

The no-merit report also addresses whether there would be any non-frivolous basis to challenge the denial of Aguilar’s motion to suppress. *See* WIS. STAT. § 971.31(10). We agree with counsel’s conclusion that any such challenge would lack arguable merit.³

Finally, the no-merit report addresses whether there is any non-frivolous argument that the circuit court erroneously exercised its sentencing discretion. Again, we agree with counsel’s conclusion that any such challenge would lack arguable merit. Our review of the record discloses no other potentially meritorious issues for appeal.

Based on the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

³ In so concluding, we note the no-merit report appears to imply that Aguilar told an investigating officer while inside the tavern that his supervision required that he have no contact with the victim. In fact, Aguilar made that statement after he was placed in handcuffs and taken to the squad.

Nonetheless, we agree with the no-merit report’s conclusion that police possessed probable cause to arrest based on disorderly conduct, which arrest occurred after Aguilar was placed in handcuffs and escorted out of the bar. Specifically, we agree with the following:

Given the history between Mr. Aguilar and [the victim], and the history of his threatening behavior towards her, the act of recording [the victim] in a bar and following her around is certainly abusive or otherwise disorderly. And the circumstances would tend to cause or provoke a disturbance because of [the victim’s] reasonable fear for her safety.

IT IS FURTHER ORDERED that Attorney Jill Marie Skwor is relieved of further responsibility for representing Daniel M. Aguilar in connection with 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