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**DISTRICT III**

November 7, 2023

To:

Hon. Scott J. Nordstrand  
Circuit Court Judge  
Electronic Notice

David J. Susens  
Electronic Notice

Kristi Severson  
Clerk of Circuit Court  
St. Croix County Courthouse  
Electronic Notice

Shawn Clarke Spottswood  
St. Croix County Jail  
1101 Carmichael Road  
Hudson, WI 54016

Winn S. Collins  
Electronic Notice

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

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2022AP581-CRNM	State of Wisconsin v. Shawn Clarke Spottswood
2022AP582-CRNM	(L. C. Nos. 2020CF654, 2021CF294)

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).**

Shawn Spottswood appeals from judgments in companion cases convicting him of possession of methamphetamine and felony bail jumping. Assistant State Public Defender Suzanne Hagopian has filed a no-merit report and supplemental no-merit report asserting that Spottswood has no arguably meritorious issues for appeal in either case. *See* WIS. STAT. RULE 809.32 (2021-22).<sup>1</sup> Spottswood has filed responses to both the initial and supplemental

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

no-merit reports. Assistant State Public Defender David Susens has since been substituted as counsel in place of Hagopian, and he has not withdrawn the no-merit reports. Having independently reviewed the entirety of the records as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), in addition to the parties' submissions, we conclude that there are no arguably meritorious issues for appeal.

In St. Croix County case No. 2020CF654, the State charged Spottswood with possession of methamphetamine and possession of drug paraphernalia, based upon evidence discovered during a dispatch call for a disabled vehicle. About six months later, in St. Croix County case No. 2021CF294, the State charged Spottswood with felony bail jumping, theft, and criminal damage to property based upon allegations that Spottswood failed to timely return a rented U-Haul truck and failed to pay for damages to the truck.

Spottswood pled guilty to possession of methamphetamine and felony bail jumping. In exchange, the State agreed to dismiss the other charges and to make a joint recommendation for a two-year term of probation to be served concurrently to a Minnesota case. The circuit court accepted Spottswood's pleas after conducting a plea colloquy, reviewing a signed plea questionnaire that addressed both cases, and ascertaining that the complaints and a preliminary hearing provided a factual basis for the pleas.

The circuit court proceeded directly to sentencing. After hearing from the parties, the court stated that it viewed both methamphetamine use and failure to obey court orders as serious matters. The court then commented that it did not think imposing the recommended probation term—which would expire around the same time as the Minnesota term of probation—would adequately serve the goals of punishment or deterrence or would provide a sufficient amount of

supervision for rehabilitation. The court then imposed a three-year term of probation on each count, to be served concurrently with each other and the Minnesota sentence.

The no-merit report sets forth the procedural history of the cases, and it addresses the validity of Spottswood's pleas and sentences and whether Spottswood's trial counsel should have filed a suppression motion. Spottswood has filed a response to the no-merit report raising multiple issues, including most prominently<sup>2</sup> that: (1) the police planted a methamphetamine pipe at the scene of Spottswood's disabled vehicle; (2) the bail jumping charge arose out of a civil matter, not a criminal one; (3) the circuit court violated Spottswood's right to be heard by telling him not to speak at several points during the proceedings; (4) Spottswood was not on probation in the Minnesota case to which the court concurrently ran his terms of probation in these matters; (5) the court violated the plea agreement by exceeding the parties' sentencing recommendations; and (6) appellate counsel did not timely provide Spottswood with all of the materials he needed to respond to the no-merit report.

Upon reviewing the records, we agree with counsel's description, analysis, and conclusion that the plea colloquy was adequate and that the circuit court imposed valid sentences. We will therefore not discuss those issues further. We will briefly address why the issues Spottswood raises in his response to the no-merit report also lack arguable merit and would not provide grounds for a suppression motion, plea withdrawal, or resentencing.

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<sup>2</sup> Spottswood raises several variations of these issues and makes numerous other arguments in passing. Although we have considered these additional issues and arguments, we deem them insufficiently developed to warrant individual discussion. See *Libertarian Party of Wis. v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996).

First, Spottswood’s allegation that the police planted a methamphetamine bubble pipe at the scene of his disabled vehicle is based upon portions of bodycam video showing the first officer on the scene placing the pipe into an evidence bag and a second officer later removing the methamphetamine pipe from the evidence bag in order to test it. Notably, neither officer’s bodycam video shows the moment the methamphetamine pipe fell out of Spottswood’s pocket when he reached for his identification (as the first officer testified at the preliminary hearing), nor does either video show any officer planting the pipe. Moreover, video from the first officer’s bodycam captures an exchange in which that officer referred to the pipe that the officer saw fall out of Spottswood’s pocket and asked Spottswood what else he had in the vehicle. Spottswood responded, “Just the Pipe.”

Because the bodycam videos do not show any evidence being planted and they are consistent with the first officer’s testimony, they would not have provided trial counsel with grounds to file a suppression motion. Additionally, we note that by entering his pleas, Spottswood forfeited the right to challenge the credibility of the officer’s preliminary hearing testimony with his own testimony. *See generally State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886 (discussing the guilty plea waiver rule).

Second, at the preliminary hearing on the bail jumping case, Spottswood’s trial counsel argued that—in the absence of evidence that Spottswood had intended to “permanently deprive” the U-Haul owner of the truck—Spottswood’s failure to timely return the truck should be treated as a civil breach of contract rather than a criminal case of theft. Spottswood now expands upon

that argument, asserting that his prosecution for theft<sup>3</sup> violated WIS. CONST. art. I, § 16, which prohibits anyone from being “imprisoned for debt arising out of or founded on a contract.” What Spottswood fails to acknowledge is that his failure to return the U-Haul truck went beyond merely owing a monetary debt to the rental company because Spottswood was still in possession of the truck after his contractual right to possess it had expired.

Under WIS. STAT. § 943.20(1)(a), whoever intentionally “retains possession of movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of such property” is guilty of theft. Therefore, as trial counsel properly recognized, the issue was whether Spottswood intended to return the truck eventually or to keep it permanently. By entering a plea to the bail jumping charge, Spottswood forfeited the right to challenge the sufficiency of the evidence to support bindover or to make the State prove beyond a reasonable doubt what Spottswood’s intention was regarding the theft charge. *See Kelty*, 294 Wis. 2d 62, ¶¶18 & n.11, 34.

Third, Spottswood complains that the circuit court did not let him discuss the pro se motions he had filed. However, Spottswood was represented by counsel. There is no constitutional right to hybrid representation or concurrent self-representation and representation by counsel. *State v. Wanta*, 224 Wis. 2d 679, 699, 592 N.W.2d 645 (Ct. App. 1999). In other words, because Spottswood chose to be represented by counsel, his right to be heard was exercised through counsel.

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<sup>3</sup> Spottswood also argues that there were insufficient facts to support the charge of criminal damage to property. We need not address that issue, however, because the theft charge alone provided a basis for the bail jumping charge to which Spottswood entered his plea.

Fourth, publicly available copies of the docket entries for Spottswood's Minnesota case, No. 82-CF-17-2353, show that Spottswood was placed on supervised probation for concurrent terms of five years beginning on January 5, 2018, on charges of aiding and abetting receiving stolen property, and receiving stolen property. Spottswood has not provided any documents that would call those public records into doubt. In addition, Spottswood's appellate counsel spoke with Spottswood's Minnesota probation agent and confirmed Spottswood's probation status. Therefore, Spottswood has failed to provide a factual basis to claim that he was sentenced based upon inaccurate information.

Fifth, the circuit court could not violate the plea agreement because the court was not a party to that agreement. The records show that Spottswood confirmed his understanding that the court was not bound by the agreement and could sentence Spottswood up to the maximum penalties, notwithstanding the parties' joint recommendation for two years' probation.

Sixth, the timeliness with which appellate counsel provided Spottswood with the transcripts and other materials from his case files has no bearing on the validity of Spottswood's pleas and sentences. Spottswood's citations to the transcripts and other materials in his responses to the no-merit report and supplemental report demonstrate that he ultimately gained sufficient access to the materials to be able to provide meaningful responses.

Our independent review of the records disclose 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 judgments of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney David J. Susens is relieved of any further representation of Shawn Spottswood in these matters pursuant to WIS. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*