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DISTRICT III

December 5, 2023

To:

Hon. Rod W. Smeltzer
Circuit Court Judge
Electronic Notice

Katie Schalley
Clerk of Circuit Court
Dunn County Judicial Center
Electronic Notice

Winn S. Collins
Electronic Notice

Laura M. Force
Electronic Notice

Vincent D. Jensen
404 2nd Avenue
Prairie Farm, WI 54762-9440

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

2022AP534-CRNM State of Wisconsin v. Vincent D. Jensen (L. C. No. 2018CF413)

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).

Vincent Jensen appeals from a judgment convicting him, as a repeat offender, of a second or subsequent offense of possession of methamphetamine, possession of drug paraphernalia, and misdemeanor bail jumping. Assistant State Public Defender Laura Force has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ The no-merit report sets forth the procedural history of the case and addresses the sufficiency of the evidence to support the verdicts, whether the circuit court properly denied a motion for a mistrial raised at sentencing, whether Jensen's trial counsel provided ineffective assistance by failing to

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

move for a mistrial earlier, and whether there is any basis to challenge the sentences. Jensen was advised of his right to respond to the no-merit report, but he has not filed a response. At this court's request, counsel has also filed a supplemental no-merit report addressing whether there were grounds for a suppression motion. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude there are no arguably meritorious issues for appeal.

The charges arose from evidence recovered when police responded to a 911 call. At trial, a woman testified that she called 911 because Jensen, who had been staying at her home, had become abusive and would not leave. Menominee Police Officer Ryan Gilbertson testified that he responded to the dispatch call and spoke with Jensen. Jensen agreed to leave the house, and Gilbertson allowed Jensen to collect some belongings in the presence of another officer.

Based upon a comment the caller made during the 911 call that she thought Jensen was hiding his drug paraphernalia while she was locked in the bathroom, the second officer asked Jensen where the drugs or drug paraphernalia were located. Jensen pointed to the plastic trash bag into which he had just packed his belongings. Gilbertson then removed a brown jewelry box from the trash bag, opened the box, and recovered from it a small Ziploc bag, a green plastic container containing a crystal-like substance, and a glass bubble pipe typically used to smoke methamphetamine.

An analyst from the State Crime Laboratory testified that the crystal-like substance tested positive for methamphetamine. The State also introduced a bond form Jensen had signed in another criminal case, which required that he not commit any new crimes while on release.

During its deliberations, the jury sent out a note stating: “Noticed the defendant was writing a lot of Notes. The Jury is concerned if our personal information that was written down is destroyed as our Notes on this trial are being destroyed[.]” After consulting with counsel, the circuit court responded to the jury:

I understand your question. I do not believe this should be an issue. My observation is the defendant was writing about the testimony of witnesses to share with his attorney during the trial.

The defendant has a right to take notes also during voir dire to, again, share with counsel. [T]his should not be a concern. A defendant has a right to share and give his input to his attorney about which jurors should hear their case.

Both attorneys are turning into the clerk[']s office (Barb here at trial tonight) any information they have on each of you, which is minimal. This is not something I have done before, but I will do this for you today.

Shortly after the court answered its question, the jury returned guilty verdicts on all three counts.

The circuit court subsequently held a sentencing hearing. Prior to making a sentence recommendation, Jensen’s trial counsel moved for a mistrial based upon the jury’s note. He alleged the note showed that the jury was focused on “their own fears or insecurities” rather than the evidence. The court denied the motion, concluding that its response to the note had been adequate to dispel any fears the jury had and, in any event, Jensen had forfeited any objection by not raising it at trial. After hearing from the parties, the court commended Jensen for the actions he had taken since the offenses to obtain treatment and make changes in his life. The court then withheld sentence and placed Jensen on one year of probation on the methamphetamine count, along with costs and surcharges, and imposed a sentence of costs and surcharges alone on the remaining two counts.

We agree with counsel’s description, analysis, and conclusion that any challenges to the sufficiency of the evidence, the denial of the mistrial motion, counsel’s performance, or the sentences would lack arguable merit. We first note that the jury’s question about Jensen’s possession of their personal information might have raised questions if the jury had acquitted Jensen, suggesting that it might have done so based upon fear of reprisals. However, we can discern no logical reason why the jury would have *convicted* Jensen based upon fear of reprisals rather than upon the evidence—which was more than sufficient to support the verdicts. In particular, the jury could fairly infer that Jensen possessed the box containing the drugs and paraphernalia because he packed it among his belongings and that he was aware of the box’s contents because he pointed to the trash bag where he had just packed the box when asked where his drugs and paraphernalia were. Counsel had no grounds for a suppression motion related to the seizure of the box from Jensen’s trash bag because Jensen was on probation for a felony. His belongings were therefore subject to search under WIS. STAT. § 973.09(1d), based upon reasonable suspicion. The sentences imposed were well within the available penalties; they were not unduly harsh; and there is no indication they were based upon any inaccurate information or improper factor.

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 Assistant State Public Defender Laura Force is relieved of any further representation of Vincent Jensen 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